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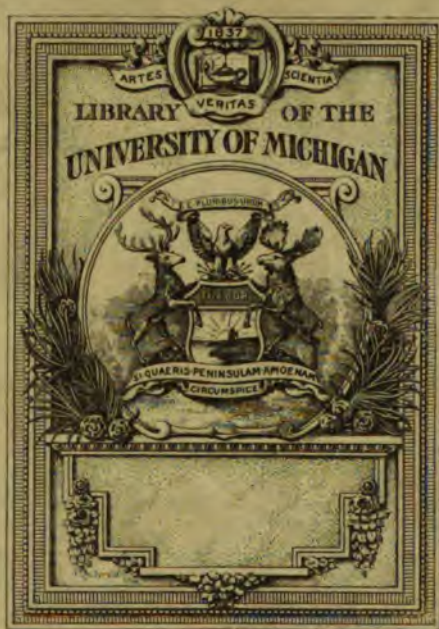
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The Statutory and Case Law

APPLICABLE TO

PRIVATE COMPANIES

75320,
UNDER

The General Corporation Act of
New Jersey .

AND

CORPORATION PRECEDENTS.

BY

JAMES B. DILL,
COUNSELOR AT LAW.

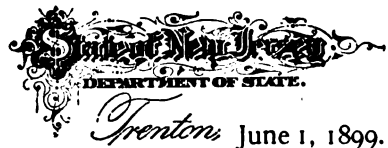
SECOND EDITION.

NEW YORK:
BAKER, VOORHIS & COMPANY.

1899.



*George W. Wurts, Secretary of State
Alex. H. Dickey, Asst. Secy. of State*



Such forms contained in this volume as are required by law to be filed have been submitted to and approved by this department, and are substantially the same as now in use in this office.

George Wurts.

Secretary of State.

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AMENDMENTS OF 1900.

The laws passed by the Legislature of 1900 affecting corporations generally were few in number. They are:

Chapter 124, amending Section 43 of the Corporation Act;

Chapter 172, permitting cumulative voting where proper provision therefor is made in the certificate of incorporation;

Chapter 126, requiring all state taxes to be paid before filing of certificate of dissolution.

These acts will be found interleaved at the appropriate places, at pages 33, 46 and 58.

The new form of annual report will be found interleaved at page 302.

JAMES B. DILL.

NEW YORK, April 2, 1900.

Rec'd 1000 1000 A.Y.M.

Preface to the Second Edition.

The amendments to the General Corporation Act of New Jersey by the Legislature of 1899 would not in themselves have called for another edition, but the generous treatment accorded the first edition exhausted the publication.

Corporation lawyers from all parts of the United States have during the past year organized many companies of importance in New Jersey, thus enabling the author, in extending the scope of the former edition, to add, as **the important feature** of a second publication, carefully selected **corporation precedents**.

These precedents, it is thought, will be of service to the profession in every state, not only in the organization of New Jersey companies, but as well in the formation of corporations under the laws of other states, as examples of the best and most modern work of corporation specialists.

The **developed law** of the State of New Jersey, owing to the high standing of the Bench, is worthy of attention, and a **digest of the reported corporation cases** is added. (See pp. 163-178.)

In connection with the **General Assignment Act of 1899**, which is by express language made applicable to corporations (see p. 159), and the provisions of the General Corporation Act respecting insolvency, the **National Bankruptcy Act** in all its bearings should be carefully considered.

While the appellate courts have not passed upon the decision of William H. Hotchkiss, Esq., Referee in Bankruptcy (District Court of the United States, Northern District of New York), *in the matter of the Empire Metallic Bedstead Co., an alleged bankrupt*, as yet reported only in the New York Law Journal,

June 7, 1899, nevertheless the conclusions advanced in that opinion are entitled to careful consideration.

In the preparation of the second edition the writer is again under obligation, for his assistance, to Mr. John S. Parker, of the New York Bar.

JAMES B. DILL.

27 Pine street, New York, July 1, 1899.

Preface to the First Edition.

Since 1875 it has been the announced and settled policy of the State of New Jersey to attract incorporated capital to the State, by the enactment of laws first wise and then liberal and by like legislation to protect capital thus invested against attacks from within and from without.

The Legislature, irrespective of party, has never hesitated to pass promptly any law which tended to improve the general scheme of incorporation.

The State has kept pace with modern legislation along these lines, remodelling and amending the corporation acts whenever necessary to meet new demands and fresh emergencies, but always with a view of doing no violence to the established scheme of incorporation, and always preserving vested rights and acquired franchises.

The "Revision of 1896" was intended to meet the modern tendency of business concerns to incorporate. It recognizes the commercial need for a system of organization of private companies, as distinguished from *quasi* public corporations, whose salient features are simplicity of organization and management, freedom from undue publicity in the private affairs of the company, and facility of dissolution without recourse to judicial proceedings.

The amendments of 1897 were pronounced in their individuality, and made it apparent that the State of New Jersey would by prompt and remedial legislation protect her corporations, stockholders, and incorporators from attack, confining, as far as practicable, all questions of construction of New Jersey corporation laws, so far as they affected the officers and incorporators of any company, to the courts of New Jersey.

The Laws of 1898, the Session just passed, follow somewhat along the line of the English "Companies Act, 1862."

The acts of 1898 have three characteristics, each distinct, each important.

The first, restrictive : Intended as a terror to the fraudulent promoter and the tramp corporation, and calculated to deter bubble organizations from claiming the State of New Jersey as their place of residence.

Compelling every corporation from its inception to its dissolution to maintain a registered office in the State of New Jersey with an agent in charge upon whom process may be served and to whom stockholders and creditors may go for information as to the personnel of the company, its assets and property. This registration of the office and the name of the agent is required to be made in every certificate, statement or report filed or published.

The second, protective : Having thus established a registered office within the State of New Jersey, where its officers, stockholders and creditors may go to obtain information which they are entitled to receive, the law closes this information to the tax gatherers of other states, and to outsiders, by making it unnecessary in the public statements made and filed to give any other address of officers and stockholders than this registered office.

Chapter 173 of the Laws of 1898 emphasizes the principal characteristic of the New Jersey act that corporations must be respectable, that the "tramp corporation" is not wanted, and that the bubble organization must seek a place of abode elsewhere than in the State of New Jersey.

The third, remedial : By an act passed the previous year the power was given the State Board of Assessors to modify the taxes of any corporation, and by an act passed this year it was left to the discretion of the Governor and the Attorney-General to remit the taxes of any corporation whose charter had been forfeited by reason of non-payment, and to restore the corporation to its powers and franchises upon payment of such sum as to the Governor and Attorney-General should seem proper, not less, however, than the initial charge for incorporation.

The 1898 amendment of Section 8 of the Revision providing for the contents of the certificate of incorporation must not be passed over without mention. The power given to incorporators in the certificate of incorporation to insert any provision, creating, defining, limiting and regulating the powers of the corporation, the directors and stockholders, is important. (See Notes, pp. 8, 21, 22.)

Taken as a whole the scheme of organization as contained in the certificate of incorporation is largely left to the incorporators. Within certain clearly defined limits parties may by their certificate of incorporation obtain what is practically equivalent to a special act of the Legislature. With the choice of powers, objects and purposes invested in the incorporators, the certificate of incorporation is no longer the mere record proof of incorporation, it is the foundation of the corporate structure.

All corporations do not possess equal powers because incorporated under the same act. The extent of their powers and privileges is largely dependent upon the certificate of incorporation.

The by-laws are under the statute a collection of semi-private rules intended to provide for the conduct of the business of the company according to the general system agreed to by the stockholders, as manifested by the certificate of incorporation.

Stockholders are thus permitted to delegate and determine and qualify the powers of the directors and officers elected to carry on the business of the company.

The liability of officers and directors is clearly defined and can result only from the making of a statement known to them to be false at the time it was made.

The law of the State of New Jersey is singularly free from pitfalls and ambiguities leading to personal liability of stockholders, officers and directors, and stockholders and officers obtain in the fullest sense limited liability.

With respect to the issuance of stock for property purchased, New Jersey has avoided the danger which the laws of many other states have created for holders of such stock. It has elimi-

nated the question of the value of property for which stock is issued, standing by itself, and with the single exception of cases in which there is absolute fraud on the part of the directors there is no liability upon the holders of stock issued for property purchased.

As it is a simple and easy process to incorporate, so, equal facility is given the stockholders to dissolve the corporation without recourse to the cumbersome and expensive process of judicial procedure so common to other states. As a corporation is created by the filing of a voluntary certificate with the Secretary of State so it may be dissolved by the filing in the Secretary of State's office of a certificate signed by all of the stockholders.

Finally, with regard to the following pages, there has been no attempt to display learning or erudition, but to give in a concise and practical form information as to the organization and subsequent management of private companies under the Laws of New Jersey.

The writer has attempted to answer in a practical way some of the many questions which have come before him during some years of active practice in relation to such companies.

The reported cases affecting private companies have been collated and arranged under appropriate headings.

The derivation of each section of the law is sought to be traced, the purpose being to show the origin and evolution of each section to the end that many matters otherwise in doubt might become clear.

The writer is under many obligations to the Hon. George Wurts, the Secretary of State of New Jersey, to the Assistant-Secretary of State of New Jersey, Hon. A. H. Rickey, and as well to the chief Corporation Clerk, John W. Brooke, Esq.

In the analysis and compilation of authorities he has had the assistance of Mr. John S. Parker, of the New York Bar.

Notwithstanding the care bestowed upon the work and the desire to make it acceptable and useful to the profession, it is not assumed that error has always been avoided, or that the work is free from fault.

JAMES B. DILL.

May 1, 1898.

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AN ACT CONCERNING CORPORATIONS

(REVISION OF 1896).

I.—Powers.

1. Powers of corporation in general; to have succession; to sue, etc.; common seal; hold real estate; also realty taken for debt; to mortgage it, together with its franchises; appoint agents; make by-laws; wind up and dissolve.
2. Powers additional.
3. Banking powers prohibited.
4. Charters subject to repeal.
5. This act may be amended or repealed.

II.—Formation, Constitution, Alteration, Dissolution.

6. Purposes for which corporations may be formed.
7. Any corporation of this state may conduct business in other states.
8. Certificate of incorporation and matters to be contained therein.
9. Authentication and record of certificate; copy evidence.
10. Corporate existence begins on filing certificate.
11. Power to make and alter by-laws.
12. Business of corporation to be managed by directors; how chosen; residence; classification; executive committee.

13. Officers; powers of; de facto; contracts signed by; duties of secretary.
14. Other officers, agents and factors.
15. Filling of vacancies among officers and directors.
16. First meeting of corporation.
17. Absent stockholders may vote by proxy; voting; quorum.
18. Stock; two or more classes may be created. Founders' shares.
19. Stock certificate.
20. Shares personal property; transfers.
21. Stockholders liable until subscriptions are fully paid.
22. Directors may make assessments until shares are fully paid up.
23. Shares of delinquent owner to be sold.
24. Treasurer to give notice of sale.
25. Certificate upon payment of capital.
26. Liability of officers neglecting to comply with preceding section.
- 26a.* Incorporators may amend certificate of incorporation before payment of capital.
27. Amendments and changes after organization.
28. Amendments by corporations under other acts.
- 28a.* Change of location of office by resolution of directors.
29. Decrease of capital stock, how effected.
30. Dividends to be made only from surplus profits.
31. Voluntary dissolution; proceedings.
32. Incorporators may dissolve corporation.

III.—Elections; Stockholders' Meetings.

33. Stock and transfer books must be kept in registered office; annual list of stockholders.
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37. Voting powers of executors or trustees. Hypothecated stock.
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39. Directors shall be stockholders.
40. Stock books to determine who may vote.
41. Election not held on designated day may be held thereafter.
42. Supreme court may summarily investigate complaints touching elections.
43. Annual statement of officers and directors to be filed.
- 43a.* Every certificate and report must give address of New Jersey office and name of agent.

* For convenience of reference, certain supplementary acts have been given arbitrary section numbers and inserted at appropriate places in the body of the "Act Concerning Corporations." These sections are Nos. 26a, 28a, 43a and 87a. Arbitrary section numbers have in like manner been given to the act relating to the reorganization of corporations (Sec. 150 *et seq.*, p. 111), to the acts relating to franchise taxes (Sec. 200 *et seq.*, p. 114), and to certain miscellaneous acts (Sec. 250 *et seq.*, p. 126).

44. Stockholders' meeting must be held at registered office in New Jersey, except where charter designates another place; corporations must maintain a New Jersey office; directors may meet out of State.
45. Name of corporation to be displayed at entrance of principal office in State.
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69. When debts paid or provided for, court may direct receiver to reconvey property, or may dissolve corporation.

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Constitution of the State of New Jersey

AS AMENDED IN 1875.

PROVISIONS RESPECTING CORPORATIONS.

ARTICLE I.

19. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation.

20. No donation of land or appropriation of money shall be made by the state or any municipal corporation to or for the use of any society, association or corporation whatever.

ARTICLE IV.

SECTION VII.

3. The legislature shall not pass any * * * law impairing the obligation of contracts or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

8. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

11. The legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say: * * * Granting to any corporation, association or individual, any exclusive privilege, immunity or franchise whatever. Granting to any corporation, association or individual the right to lay down railroad tracks. * * * The legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The legislature shall pass no special act con-

ferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the legislature.

ARTICLE X.

1. All * * * claims and rights of individuals and bodies corporate, and of the state, and all charters of incorporation shall continue.

THE GENERAL CORPORATION LAW OF NEW JERSEY.

LAWS OF 1896, CHAPTER 185.

Being "An Act Concerning Corporations (Revision of 1896)," including the amendments and supplements to the end of the legislative session of 1899.

I.—Powers.

1. Every corporation shall have power:

I. To have succession, by its corporate name, for the period limited in its charter or certificate of incorporation, and when no period is limited, perpetually;

II. To sue and be sued in any court of law or equity;

III. To make and use a common seal, and alter the same at pleasure;

IV. To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, and all other real estate which shall have been *bona fide* conveyed or mortgaged to the said corporation by way of security, or in satisfaction of debts, or purchased at sales upon judgment or decree obtained for such debts; and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest;

V. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation;

§ 1 VI. **To make by-laws**, fixing and altering the number of its directors, and providing for the management of its property, the regulation and government of its affairs, and the transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars;

VII. **To wind up and dissolve** itself, or be wound up and dissolved in manner hereafter mentioned.

P. L. 1846, p. 16; P. L. 1846, p. 65; P. L. 1849, p. 301; P. L. 1850, p. 280; P. L. 1872, p. 77; Act of 1875, § 1.

FUNDAMENTAL POWERS.

I. **To have succession.**—The Corporation Act of 1875 limited corporate existence to fifty years. Companies formed under the Act of 1875 may now have the period of their corporate existence extended or made perpetual by complying with the provisions of Section 27, *post*.

As to corporate name, see notes, Section 8.

II. **To sue, etc.**—The power to sue and be sued implies also the power to compromise suits (*Ellerman v. Chicago Junc. Ry., &c., Co.*, 49 N. J. Eq., 217).

Individual stockholders are not the proper parties to sue or defend on behalf of corporate interests without the consent of a legal majority of the stockholders (*Silk Mfg. Co. v. Campbell*, 27 N. J. Law, 539).

But a stockholder may sue in equity in his own name to enforce a right of the corporation, without first requesting the directors to sue, when it is made to appear that if such request had been made it would have been refused, or, if granted, that the litigation following would necessarily be subject to the control of persons opposed to its success (*Knoop v. Bohmrich*, 49 N. J. Eq., 82; *Ackerman v. Halsey*, 37 N. J. Eq., 356; s. c., 38 N. J. Eq., 501).

It is not necessary for a corporation plaintiff to allege its incorporation (*German R. Church v. Von Puechelstein*, 27 N. J. Eq., 30).

A corporation may sue for a libel against it in its business, but special damage must always be shown (*Trenton Mut. Life Ins. Co. v. Perrine*, 23 N. J. Law, 402).

A corporation may be sued for a tort in which the element of evil intent is involved. It may be sued for malicious prosecution, for libel and for assault and battery (*State v. Passaic, &c., Soc.*, 54 N. J. Law, 260, 265; *Vance v. Ry. Co.*, 32 N. J. Law, 334; *McDermott v. Evening Journal Assn.*, 43 N. J. Law, 488; 44 N. J. Law, 430; *Brokaw v. Ry. Co.*, 32 N. J. Law, 328).

A corporation is liable for the torts of its agents and is liable for the acts of its agents done by its authority, express or implied (*State v. Ry. Co.*, 23 N. J. Law, 360; *Brokaw v. Ry. Co.*, 32 N. J. Law, 328).

A corporation cannot defend itself in an action for a tort done by it on the ground that the business in the prosecution of which the tort was done was *ultra vires* (*N. Y., L. E. & W. R. R. Co. v. Haring*, 47 N. J. Law, 137).

A corporation may be sued on an implied contract (*Worrell v. 1st Pres. Church*, 23 N. J. Eq., 96, and cases cited).

As to what is personal service on a corporation (*Laufman v. Hope Mfg. Co.*, 54 N. J. Law, 70).

The property of a corporation judgment debtor cannot be reached under supplementary proceedings (*Connor v. Todd*, 48 N. J. Law, 361).

III. **Common seal.**—The general rule is that a corporation need use its seal only in cases where it would be essential for an individual to use a seal. The old common law idea that a corporation can only act under its corporate seal no longer prevails. (*Crawford v. Longstreet*, 43 N. J. Law, 325; see also *Bap. Church v. Mulford*, 8 N. J. Law, 182; *Mendham v. Losey*, 2 N. J. Law, 327.)

It is not necessary to use wax or wafer. An impression of the seal on the paper is sufficient. (P. L. 1875, p. 56; P. L. 1880, p. 154.)

Primarily the corporate character of the seal must be proved.

It requires evidence to substantiate its character. (*Manhattan Co. v. N. J. Stock Yard Co.*, 23 N. J. Eq., 162; *Leggett v. N. J. Mfg. Co.*, 1 N. J. Eq., 541; *Vaughn v. Hankinson's Admr.*, 35 N. J. Law, 79; *Den v. Vreelandt*, 7 N. J. Law, 352.)

No presumption of authority arises from the use of a common paper seal not on its face appearing to be the corporate seal, although accompanied by the recitation "witness the corporate seal." (*Raub v. Blairs-town Creamery Assn.*, 56 N. J. Law, 264.) There are two essential elements in the proof of a corporate deed—that the seal is the seal of the company; that it was affixed by authority. (*Osborne v. Tunis*, 25 N. J. Law, 635.) For further cases relative to corporate seal and its proof (see *Manhattan Mfg. Co. v. New Jersey Stock Yard Co.*, 23 N. J. Eq., 162; *Parker v. Washoe Mfg. Co.*, 49 N. J. Law, 465; *Whitehead v. Hamilton Rubber Co.*, 52 N. J. Eq., 78.)

IV. **Power to hold real estate.**—This section is a practical re-enactment of a similar provision of the Statute of 1846.

The practical point under this section of the statute is that it rests with the State, and with the State alone, to question the power of a corporation to hold real estate. (*State v. Mansfield*, 23 N. J. Law, 510.)

Except, perhaps, the case of a devise to a corporation of lands in excess of the amount expressly limited in the charter, where the court allowed the question to be raised by an heir-at-law by a suit in chancery. (*DeCamp v. Dobbins*, 29 N. J. Eq., 36; s. c., 31 N. J. Eq., 671.)

Under the Act of 1875 a corporation was not authorized to hold real property "exceeding the amount limited in its charter," but all such limitations, express or implied, were removed in the Revision of 1896.

It is sometimes wise as one of the general powers to insert in the certificate of incorporation a provision substantially as follows:

"To have one or more offices, to carry on all or any of its operations and business, and unlimitedly and without restriction to hold, purchase, mortgage, lease, and convey real and personal

§ 1

"property in any State or Territory of the United States, and
"in any foreign country or place."

The English statutes of Mortmain have never been in force in this State. (*State v. Mansfield*, 23 N. J. Law, 512; *State v. Newark*, 25 N. J. Law, 315.)

A corporation may hold title to lands in fee simple, even though the period of the corporation's existence is limited. (*State v. Brown*, 27 N. J. Law, 13; *State v. Haight*, 35 N. J. Law, 178; s. c., 36 N. J. Law, 471.)

As to power to grant easements, see *Benton v. Elisabeth*, 61 N. J. Law, 411; aff'd 61 N. J. Law, 693.

Mortgages.—There is no prescribed statutory procedure for the creation or execution of mortgages by corporations organized under this act. No consent of stockholders is required as in New York. While the power to create mortgages is undoubtedly vested in the directors (Section 12) it is wise, and the usual practice, in the absence of express authority to the directors in the certificate of incorporation to obtain the sanction of the stockholders at a duly convened meeting to the giving of any mortgage.

V. To appoint agents.—The power to appoint officers and agents is ordinarily in the directors, but it may be delegated. It is not necessary that the appointment of an agent should be made under the corporate seal. (*Mendham v. Losey*, 2 N. J. Law, 327.)

The manner of appointing agents is usually prescribed by the by-laws.

In a recent case the Court of Chancery held that a trading or manufacturing corporation, until its charter is annulled by a proper proceeding at law, has the same authority as an individual trader or manufacturer to sell or consign its goods, to select its selling agents, and to impose conditions as to whom they shall sell, and the terms upon which they shall sell. (*Stockton v. American Tobacco Company*, 55 N. J. Eq., 352.)

Where persons are officers *de facto*, they are *in colore officii*, and their acts will be valid until they are lawfully ousted; and more especially as they respect third persons they are binding on the corporation, and third persons are bound by them. (*Doremus v. Dutch Refd. Church*, 3 N. J. Eq., 349; *Bank v. Burnet Mfg. Co.*, 32 N. J. Eq., 238; *Brahn v. Jersey City Forge Co.*, 38 N. J. Law, 74; *Bank v. Chetwood*, 8 N. J. Law, 1.)

But the officer himself can acquire no rights. (*Green v. Kleinhans*, 14 N. J. Law, 473, 477.)

See further as to officers and agents and *de facto* officers, pages 29-32, *post*.

VI By-laws.—As to where the power to make and alter by-laws lies, see Sec. 11, *post*.

See Sec. 28 as amended in 1898.

By-laws are binding upon and confer rights upon members of the corporation and not upon third persons without notice. (*State v. Overton*, 24 N. J. Law, 440.)

Where a by-law is adopted as a part of the original organization of the company, and the subscriptions of stock are made and money paid thereon upon the strength of it, it becomes a fundamental contract between the stockholders, and cannot afterwards be altered, even though a general power be reserved in the by-laws to make alterations therein. Rights under such a by-law are vested in the stockholders and pass to

each new holder of stock by transfer. (*Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq., 440.) § 2

For early cases declaratory of general principles relating to by-laws see *Taylor v. Griswold*, 14 N. J. Law, 222; *Paxson v. Sweet*, 13 N. J. Law, 196; *State v. Overton*, 24 N. J. Law, 440.

VII. To wind up and dissolve.—This subject will be treated more fully in discussing Sections 31 and 69. Generally speaking, aside from the inherent power of the State to forfeit a charter for misuser or nonuser, the statutes alone provide the means by which a private corporation may be dissolved, and any other method may be enjoined. (*Hunt v. American Grocery Co.*, 81 Fed. Rep., 532.) In *Hoboken Building Association v. Martin* (13 N. J. Eq., 427) it was contended that a failure to elect officers according to the requirements of the constitution worked a dissolution. But the Chancellor held that it did not. This matter is now settled by statute. (Sec. 41, *post*.)

The charter of a company is not extinguished by a transfer of all its real and personal property. (*Zinc Co. v. Franklinite Co.*, 13 N. J. Eq., 323; *Sewell v. East Cape May Beach Co.*, 25 Atl. Rep., 929.)

The ways by which a corporation may be wound up and dissolved, as provided in the statutes, are :

1. By limitation in the certificate of incorporation. The corporate existence is continued, however, for the purpose of settling up and closing the affairs of the company. (Sec. 53.)
2. By surrender of the corporate franchises. (Sec. 32.)
3. Voluntary dissolution by the directors and stockholders, or by unanimous consent of the stockholders. (Sec. 31.)
4. By the Legislature. (Sec. 4.)
5. By decree of the Court of Chancery in insolvency proceedings. (Sec. 69.)
6. The Court of Chancery or Supreme Court may declare charter of company forfeited for failure to obey order to bring books into the State. (Sec. 44.)
7. By proclamation of the Governor for failure to pay taxes (p. 122).

2. Powers additional.

In addition to the powers enumerated in the first section of this act and the powers specified in its charter or in the act or certificate under which it was incorporated, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this act, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, so far as the same are appropriate to and not inconsistent with such charter or the act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such

§ 2 incidental powers as shall be necessary to the exercise of the powers so given.

P. L. 1846, p. 16, Act of 1875, §§ 2, 3, 9.

This section is an important provision of the Corporation Law, involving the question as to what corporate powers are granted by the Statutes of New Jersey.

In 1846 the act entitled "An Act Concerning Corporations," approved February 14, 1846 (P. L. 1846, p. 16), was passed, giving all corporations substantially the same general powers as are contained in paragraphs 1 to 5 of this act.

In the same year "An Act to authorize the establishment and prescribe the duties of manufacturing companies," approved February 25, 1846 (P. L. 1846, p. 64), was passed.

This was the first General Enabling Act of New Jersey. During the next three years recourse was had to the Legislature by way of special charters for specific powers and objects, until it became apparent from the multiplicity of special charters that an extension of the General Enabling Act (P. L. 1846, p. 64) was necessary so as to include corporations other than manufacturing. Accordingly in 1849 the General Enabling Act was broadened to include companies for manufacturing and other purposes by the passage of an act entitled "An Act to authorize the establishment, and to prescribe the duties of companies for manufacturing and other purposes," approved March 2, 1849 (P. L. 1849, p. 300).

The "Act Concerning Corporations," approved February 14, 1846 (P. L. 1846, p. 16), which prescribed the powers of corporations in general, remained practically unchanged down to the Revision of 1875.

Meanwhile the General Enabling Act of 1849 (P. L. 1849, p. 300) was supplemented by various acts of the Legislature from time to time.

In 1875 the Constitution of New Jersey, as then amended, provided that the "Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained."

In obedience to the provision of the Constitution the Corporation Act of 1875 was passed and in that act the fundamental powers of corporations as defined under "An Act Concerning Corporations," approved February 14, 1840 (P. L. 1846, p. 16), were substantially reiterated.

The Revision of 1896 consolidated Sections 2 and 3 of the Act of 1875 into Section 2 of the Act of 1896.

Before proceeding to analyze this section it should be borne in mind that the act is applicable to domestic corporations generally, including (1) corporations under special charters granted by the Legislature, or under the General Corporation Act prior to 1875; (2) corporations created under general acts of the Legislature applicable to different classes of corporations, such as banking, insurance, etc., as well as (3) to corporations

organized under the Act of 1875. Therefore, when the statute reads "in § 2
"addition to the powers enumerated in the first section of this act and
"the powers specified in its *charter*" it includes companies created by
special charters granted by the Legislature prior to 1875.

At common law a corporation created by charter could do any act that an individual could do, whether expressly empowered by its charter to do such act or not. For an abuse of its powers it was amenable to the sovereign alone. (*Riche v. Ashbury Co.*, L. R., 9 Exch., 224, 262.)

A corporation created by statute, however, is precisely what the organic act makes it. For every function it claims to exercise and for every power it assumes to possess it must find authority in legislative grant. (*Watson v. Acquackanonk Water Co.*, 26 N. J. Law, 195; *Stockton v. Central R. R. Co.*, 50 N. J. Eq., 52.)

When we seek to ascertain the powers of a corporation under this act we find that there are two sources from which its *express* powers are derived. These are:

- (1) The "Act Concerning Corporations."
- (2) The certificate of incorporation.

I. The "Act Concerning Corporations." It should be borne in mind that this act has a twofold scope. It contains—

- (a) A code of general rules of law applicable to all corporations.
- (b) An enabling act under which certain kinds of corporations may be formed. (See Section 6.)

In its first aspect it declares the fundamental powers which shall be possessed by every corporation. These are set forth in Section 1. These are, with some slight modifications, declaratory of the common law attributes of corporate existence, as stated by Coke and Blackstone. These are basic and inherent powers, pertaining to a corporation as such without regard to the object of its creation. In the next place, it confers certain additional general powers and privileges on all corporations, however organized, but only "so far as the same are necessary or convenient "to the *objects* set forth in such charter or certificate of incorporation." (*Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217.)

It confers also certain express powers on condition that they are inserted in the certificate of incorporation. Such, for instance, as the power to issue preferred stock (Sec. 18); to transact business outside of New Jersey (Sec. 7)

In the third place it prescribes that every corporation "shall be governed by the provisions and be subject to the restrictions and liabilities "in this act contained, so far as the same are appropriate to and not "inconsistent with such charter or the act under which such corporation "was formed."

This clause is applicable to corporations organized otherwise than

§ 2 under this act. As to corporations organized under this act, it is provided that the certificate of incorporation must be consistent with the act (Sec. 8), and Section 5 provides "this act and all amendments thereof shall be a part of the charter of every corporation heretofore or hereafter formed hereunder, except as far as the same are inapplicable and inappropriate to the objects of such corporation."

In its second aspect the act enumerates the kinds of corporations that may be organized under it, prescribes the procedure for their organization, confers upon them certain powers and privileges, and imposes certain regulations as to their conduct and management.

II. *The certificate of incorporation.*—The second source from which a corporation derives its express powers is its Certificate of Incorporation, and in the discussion which follows reference is had only to corporations formed under the "Act Concerning Corporations."

"The general act gives to all corporations general corporate powers and all others necessary to their exercise.

"If these were not sufficient to effect the objects of the corporation recourse was formerly had to the Legislature for a specific grant of power. The Constitution providing that 'the Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained,' and the general corporation act being as it now stands passed in obedience to the mandate of the Constitution, the certificate required by that act becomes the charter of the company, and the equivalent of the former special act of the Legislature." (*Ellerman v. Chicago Junction Ry., &c., Co.*, 49 N. J. Eq., 217, 240, 241.)

As though to carry this idea to its logical conclusion, by an amendment to Section 8 passed in 1898 (Chap. 172) corporations are now authorized to insert in their certificate of incorporation provisions "creating and defining the powers of the corporation." This is perhaps an innovation in general enabling acts, and if the word "create" is to be given its usual and ordinary meaning it is as though the Legislature has endowed the incorporators with a lawmaking power, enabling them to give the corporation such powers as they see fit, provided only that such powers are not inconsistent with the act itself. In other words, unless a power is expressly or impliedly forbidden by the statute it may be *created* under this section.

These words may also be taken in a second and additional meaning, that outside of the express powers granted by Section 1, and the powers directly incidental to these powers, all others are lying dormant and not available to any other corporation under the act, until called into being and made applicable to the charter by being specified among the objects and purposes and powers of the corporation.

It is apparent that in the State of New Jersey special opportunity is given for the skill of counsel in drawing a certificate of incorporation. It is as though the Legislature had laid out, first, seven express powers which all corporations should possess, and then had defined certain limits beyond which corporate powers could not go, and then provided a method of obtaining the equivalent to a special charter containing any and every other power which should be desired, not inconsistent with the provisions of the act itself. § 2

Implied powers.—The above statement outlines the statutory powers possessed by corporations, and which may be designated its express powers. The statute then provides that "No corporation shall possess or exercise "any other corporate powers, except such incidental powers as shall "be necessary to the exercise of the powers given." This is the statement in negative form of the general rule that a corporation has implied power to do any act reasonably necessary to the exercise of its express powers.

The courts of New Jersey have placed a liberal construction upon the words "necessary to the exercise" contained in the Act of 1875. "Power "necessary to a corporation does not mean simply power which is indispensable * * * a power which is obviously appropriate and convenient to carry into effect the franchise granted has always been "deemed a necessary one. * * * In short, the term comprises a "grant of the right to use all the means suitable and proper to accomplish the end which the Legislature had in view at the time of the enactment of the charter." (*State R. R. Co. v. Hancock*, 35 N. J. Law, 537. See also *McCulloch v. Maryland*, 4 Wheat., 316, 414; *Olmstead v. Morris Aqueduct*, 47 N. J. Law, 311; *Crawford v. Longstreet*, 43 N. J. Law, 325; *Morris Canal Co. v. Love*, 37 N. J. Law, 60.)

"The general corporation act confers on the company certain powers, "the certificate contemplates others, and incidental powers follow, not "only with respect of the general but also of the special powers." (*Ellerman v. Chicago Junction Ry., &c., Co.*, 49 N. J. Eq., p. 217 241.)

As an example of implied power a corporation is impliedly authorized to borrow money and has the incidental power to give security for its repayment, and to make negotiable notes, and to endorse notes loaned to it for its accommodation. (*Lucas v. Pitney*, 27 N. J. Law, 221; *Fifth Ward Sav. Bk. v. First Nat. Bank*, 48 N. J. Law, 513; *Blake v. Domestic Mfg. Co.*, 38 Atl. Rep. 241. See also *Savage v. Ball*, 17 N. J. Eq., 142; *Montague v. Church District*, 34 N. J. Law, 218; *Hackensack Water Co. v. De Kay*, 36 N. J. Eq., 548.)

A corporation has no power to become a party to bills or notes for the accommodation of others. When, however, a corporation has power, under any circumstances, to issue negotiable paper, a *bona fide* holder has

§ 2 the right to presume that it was issued under the circumstances which give the requisite authority, and such paper is no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper. (Id.)

Bond issue.—There is no statutory limitation on the power of a corporation organized under this act to issue bonds or debentures, whether secured by mortgage or otherwise.

The powers of a corporation organized under this act may be summarized as follows:

I. **Express powers**—directly or indirectly given by statute and derived from—

(1) “**Act Concerning Corporations**”:

- (a) Fundamental and inherent (Sec. 1).
- (b) Incidental; dependent upon objects of company.
- (c) Special; peculiar to corporations organized under act.
- (d) Special; must be stated in certificate of incorporation.

(2) **Certificate of incorporation.**

II. **Implied powers.**

ULTRA VIRES.—It was formerly the rule in this State that acts of a corporation in excess of its express powers, or those necessarily implied, were void, and contracts which were *ultra vires* the corporation were incapable of enforcement or ratification. Such acts or contracts could not become the foundation of a right of action either by or against the corporation. (*Trenton Mut. L. Ins. Co. v. McKelway*, 12 N. J. Eq., 133; *Natl Trust Co. v. Miller*, 33 N. J. Eq., 163; *Black v. Delaware & Raritan Canal Co.*, 24 N. J. Eq., 455; *Leggett v. N. J. Mfg. & Bkg. Co.*, 1 N. J. Eq., 541; *State v. Mansfield*, 23 N. J. Law, 510.)

This rule no longer obtains. The present rule is that an *ultra vires* contract which has been performed on one side will be enforced in all those cases where the party performing cannot, upon rescission, be restored to his former status. The company is deemed to have acquiesced in the *ultra vires* act, and is precluded from interposing its own infirmity to the injury of the other party. An executory contract, *ultra vires*, however, cannot be enforced, even though acquiesced in by every stockholder, and an *ultra vires* contract, fully executed, cannot be receded from. (*Camden & Atl. R.R. Co. v. Mays Landing, &c., R. R. Co.*, 48 N. J. Law, 530; *Ellerman v. Chicago Junc. Ry., &c., Co.*, 49 N. J. Eq., 242; *Chapman v. Ironclad Rheostat Co.*, 41 Atl. Rep., 690.)

Remedies.—1. **By the stockholders and third persons.**

The Court of Chancery will interfere by injunction, at the instance of a stockholder, to restrain the corporation from using the corporate funds in the exercise of unauthorized powers. (*Gifford v. N. J. R. &*

Transportation Co., 10 N. J. Eq., 171.) And in *Del. & Rar. Canal v. Rar. & Del. Bay R. Co.*, 16 N. J. Eq., 321; aff'd 18 N. J. Eq., 546, it was held that equity will restrain a corporation from exercising powers with which the Legislature has not invested it if those powers interfere with the rights or property of others, whether such exercise is mistaken or fraudulent. § 3

2. — **Proceedings by the Attorney-General to forfeit the charter of the company.**

"The State may interpose its authority at any time and compel 'an abandonment of the act in excess of power, and, if need be, revoke 'the charter of the company for its usurpation.

"When the State challenges the legality of the transaction, the paramount and only question is whether it has bestowed upon the company 'the requisite authority to engage in it. When the question arises 'between the company and the other party to the contract, other legal principles apply in determining whether the contract shall be observed." (*Camden & Atl. R. R. Co. v. Mays Landing, &c., R. R. Co.*, 48 N. J. Law, 567.)

The Court of Chancery is not the proper tribunal for calling in question the rights of a corporation, as such, for the purpose of declaring its franchises forfeited and lost. Such power is of right to be exercised by a court of law. (*Society for Establishing Useful Manufactures v. Morris Canal & Bkg. Co.*, 1 N. J. Eq., 157; *Stockton v. American Tobacco Co.*, 55 N. J. Eq., 352.)

3. **Banking powers prohibited to corporations organized under this act.**—No corporation created or to be created under the provisions of this act shall, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt or of receiving deposits of money, of buying gold or silver bullion or foreign coins, or of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money.

(As amended by Chap. 176, Laws of 1899; P. L. 1899, p. 473.)
P. L. 1846, p. 16; Act of 1875, § 4.

The general prohibition against the exercise of unauthorized banking powers is contained in the "Act concerning banks and banking (Revision of 1899)."

Banking corporations must now be formed under "An Act concerning banks and banking (Revision of 1899)."

This section affects in no way the power of a corporation to issue and receive negotiable paper in the usual course of business, or for any pur-

§ 4 pose incidental to the legitimate business for which the company was formed (See Morawetz on Private Corporations, Section 321, and cases cited)

Corporations formed under "An Act concerning trust companies (Revision of 1899)" have all the powers of banks except the power to discount bills and notes.

4. Charters subject to repeal.

The charter of every corporation, or any supplement thereto or amendment thereof, shall be subject to alteration, suspension and repeal, in the discretion of the legislature, and the legislature may at pleasure dissolve any corporation.

P. L., 1846, p. 17, Act of 1875, § 6.

Charters are contracts.—"Charters of private corporations are regarded "as executed contracts between the State and the corporator, and the rule "is settled, that if the charter does not contain a reservation of power "in the Legislature to modify or change the contract, the Legislature "cannot repeal, impair or alter such a charter against the consent or "without the default of the corporation." (*Montclair v. N. Y. & Greenwood Lake Ry. Co.*, 45 N. J. Eq., 436.)

It was to avoid the rule of the Dartmouth College case that this section was enacted.

"The power of the Legislature has its limits. It can repeal or suspend the charter; it can alter or modify it; it can take away the charter; "but it cannot impose a new one, and oblige the stockholders to accept it."

The power to repeal, suspend or alter the charter is a reservation to the State for the benefit of the public, to be exercised by the State only. "The State was making what had been decided to be a contract, and it "reserved the power of change, by altering, modifying or repealing the "contract." (*Mills v. Central R. R. Co.*, 41 N. J. Eq., 1, 8.)

"The power reserved by the legislature in the act of 1846, to alter, "suspend and repeal, relates to those matters which concern the public "and not to the mode of controlling the affairs of the stockholders, *inter sese*." (*In re election of Directors of Newark Library Ass'n.*, decided by Supreme Court, June Term, 1899.)

The Legislature has no authority to make any alteration or amendment in a charter granted subject to this section, that will defeat or substantially impair the object of the grant, or any rights which have vested under it. (*Zabriskie v. Hackensack & N. Y. R. Co.*, 18 N. J. Eq., 178.)

The Legislature has power to confer upon a court authority to declare a charter forfeited for a specified misfeasance or malfeasance. (*Huyilar v. Cragin Cattle Co.*, 40 N. J. Eq., 392, 396.) See section 44, *post*.

5. This act may be amended or repealed, at the pleasure of the legislature, and every corporation created under this act shall be bound by such amendment; but such amendment or

repeal shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every corporation heretofore or hereafter formed hereunder, except so far as the same are inapplicable and inappropriate to the objects of such corporation. § 5-6

P. L. 1846, p. 65; P. L. 1849, p. 301; Act of 1875, §§ 14, 35.
See notes to Section 4, *ante*.

II.—Formation, Constitution, Alteration, Dissolution.

6. **Purpose for which corporation may be formed.**—Upon executing, recording and filing a certificate pursuant to all* the provisions of this act, three or more persons may become a corporation for any lawful purpose or purposes whatever other than a savings bank, a building and loan association, an insurance company, a surety company, a railroad company, a telegraph company, a telephone company, a canal company, a turnpike company or other company which shall need to possess the right of taking and condemning lands in this state, or other than a corporation provided for by "An Act concerning banks and banking (Revision of 1899)," or by "An Act concerning trust companies (Revision of 1899)," or by "An Act concerning safe-deposit companies (Revision of 1899)"; it shall, however, be lawful to form a company hereunder for the purpose of constructing, maintaining and operating railroads, telephone or telegraph lines outside of this state.

(As amended by Chap. 176, Laws of 1899; P. L. 1899, p. 473.)

P. L. 1846, p. 64; P. L. 1849, p. 300; P. L. 1852, p. 87; P. L. 1853, p. 427; P. L. 1855, p. 706; P. L. 1865, p. 707; P. L. 1865, p. 913; P. L. 1869, p. 1001; Act of 1875, § 10; P. L. 1876, p. 103; P. L. 1880, p. 92; P. L. 1888, p. 112; P. L. 1889, p. 411; P. L. 1894, p. 497.

Corporations may be organized under this act for any lawful purpose or *purposes*, and are not limited to a single object or purpose.

The incorporation of the classes of corporations expressly excepted from the provisions of this section is provided for by other acts. Some of these acts contain express provisions prohibiting the incorporation of companies provided for by them under any other act. See "An Act concerning banks and banking, Revision of 1899" (P. L. 1899, p. 431). Under the provisions of the Trust Company Act of 1899 not only is the organization of a trust company forbidden under any other act, but the act forbids the exercise within the State of New Jersey of certain specified powers exclusively conferred upon trust companies (P. L. 1899, p. 455), the more important of which are:

"(1) To act as the fiscal or transfer agent of any state, municipality,

* See section 43a, *post*.

§ 6 body politic or corporation, and in such capacity to receive and disburse money.

"(2) To transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

"(5) To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

"(16) To receive and manage any sinking fund of any corporation, upon such terms as may be agreed upon between said corporation and those dealing with it.

"(17) Generally to execute trusts of every description not inconsistent with the laws of this state or of the United States."

There are other classes of corporations not specified in this section for the incorporation of which separate acts have also been passed. Among them are gas companies (G. S., p. 1608), water companies (G. S., p. 2109), street railways (G. S., p. 3216) and traction companies (G. S., p. 3235). These acts are not by their terms expressly exclusive. Can companies, for the organization of which other general laws exist, be lawfully incorporated under this act? The safe answer is the negative.

In *Richards v. Dover* (61 N. J. Law, 400, 402) the court said: "The passage of these general laws authorizing the incorporation of gas companies shows a clear legislative intent to separate gas companies from those corporations which may lawfully be organized and provided under the general corporation act, and to subject the former to limitations and restrictions not applicable to the latter. * * * Mr. Justice Magie, in *Domestic Telegraph Co. v. Newark*, 49 N. J. Law, 344, 348, said that the passage of the act * * * providing for the organization of telegraph and telephone companies, in modes and under conditions quite inconsistent with those prescribed by the general corporation act, seemed to be a strong legislative declaration that such companies could not be organized so as to acquire a corporate existence under the latter act. In my judgment, the Legislature has clearly expressed its intention that no corporation shall acquire or exercise the franchise of a gas company without subjecting itself to the salutary provisions of the gas act by incorporating under it."

Person.—The word "persons" in this act does not include corporations. By analogy *Coddington v. Exrs. of Havens*, 8 N. J. Eq., 590.

A corporation cannot in its own name subscribe for stock, or be a corporator under the General Railroad Law; nor can it do so by simulated compliance with the provisions of the law through its agents as pretended corporators and subscribers for stock. (*Central R. R. Co. of N. J. v. Pa. R. R. Co.*, 31 N. J. Eq., 475-494)

Compare Section 51, *post*, giving any corporation the power to purchase, hold, &c., stock and bonds of other corporations.

Infants.—The statute authorizes *persons* to form a corporation; it is implied that they shall be of full age. (*Matter of Globe, &c., Assn.*, 135

N. Y., 280, 284, and cases cited. See also *Lindley on Companies*, p. 39.) § 7
 In England it has been held that the incorporation is not rendered invalid by the fact that one of the subscribers was an infant. (*Nassau Phosphate Co.*, 2 Ch., D. 610.)

7. Any corporation of this state may conduct business in other states or in foreign countries and have one or more offices out of this state, and may hold, purchase, mortgage and convey real and personal property out of this state; *provided*, such powers are included within the objects set forth in its certificate of incorporation.

P. L. 1865, p. 354, Act of 1875, § 15; P. L. 1889, p. 412.

The right of a New Jersey corporation to do business without the State is based upon this provision. The corporation exists by force of the law that created it, and where that law ceases to exist and is not obligatory, the corporation can have no existence. (*Hilles v. Parrish*, 14 N. J. Eq., 380, 383.)

It is usual to insert in the certificate of incorporation a clause somewhat as follows:

"The corporation shall also have power to conduct its business in all its branches, and have one or more offices and unlimitedly to hold, purchase, mortgage and convey real and personal property outside of the State of New Jersey, in any or all of the several States and Territories of the United States and in the District of Columbia, and in any or all foreign countries, and especially in (specifying certain cities and States)."

Under the Act of 1875 and the supplement of 1889 (P. L. 412) a corporation could carry on a part of its business out of the State, provided that the portion of such business to be carried on out of the State and the location of its principal office or place of business out of the State were stated in the certificate of incorporation. An act of 1892 permitted any corporation to carry on and conduct its business outside of the State, though not so empowered in the certificate of incorporation. (P. L. 1892, p. 90.) The question arose whether a manufacturing corporation, incorporated under the Act of 1875, which stated in its certificate that the business to be carried on in the State was manufacturing, and that the portion of its business outside the State was the selling of its manufactured products in the cities of New York and Brooklyn, could, under the Act of 1892, remove its manufacturing plant to another State. It was held by the Court of Chancery that such a removal was a material change in the object of the company which could not take place without the consent of every stockholder. The Court held, however, that a removal to another part of the State was not a material change. (*Stickle v. Liberty Cycle Co.*, 32 Atl. Rep. 708.)

Section 7 of the present act was apparently drafted for the purpose of meeting this case, and where the certificate of incorporation is properly drawn the power can be put in the directors to carry on the business of

§ 8 the company wherever from time to time they deem will be best suited to the objects of the company.

8. **The certificate of incorporation** shall be signed in person by all the subscribers to the capital stock named therein, and shall set forth:

I. **The name** of the corporation; no name shall be assumed already in use by another existing corporation of this state, or so nearly similar thereto as to lead to uncertainty or confusion;

II. **The location** (town or city, street and number, if number there be) of its **principal office** in the state;

III. **The object or objects** for which the corporation is formed;

IV. The amount of the total authorized **capital stock** of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided and the par value of each share; the amount of capital stock with which it will commence business, which shall not be less than one thousand dollars; and, if there be more than one class of stock created by the certificate of incorporation, a description of the different classes, with the terms on which the respective classes of stock are created;

V. The **names** and post office address of the **incorporators** and the number of shares subscribed for by each; the aggregate of such subscriptions shall be the amount of capital stock with which the company will commence business, and shall be at least one thousand dollars;

VI. The **period**, if any, limited for the duration of the company;

VII. **The certificate of incorporation may also contain any provision** which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision **creating, defining, limiting and regulating the powers** of the corporation, the directors and the stockholders, or any class or classes of stockholders; *provided*, such provision be not inconsistent with this act.

(As amended by Chap. 172, § 2, Laws of 1898, P. L. 1898, p. 407)

P. L. 1846, p. 64; P. L. 1849, p. 300; Act of 1875, § 11; P. L. 1876, p. 103; P. L. 1884, p. 82; P. L. 1888, p. 152.

The provision that the certificate of incorporation should be signed in person by all of the subscribers to the capital stock named therein is new. § 8
It is not proper, therefore, to sign by an attorney in fact.

The practice of inserting in the certificate of incorporation the names of a number of subscribers to the capital stock, but having the certificate signed only by a part, not less than three, is thus forbidden.

The certificate should not only be signed, but should also be sealed by all the incorporators and subscribers. This because Section 9 requires the certificate of incorporation to "be proved or acknowledged as required "for deeds of real estate." In the case of deeds of real estate the officers before whom the acknowledgments are taken shall certify that the "party signed, sealed and delivered" the same. (P. L. 1898, p. 679.)

Certificate of incorporation.—The certificate of incorporation is the charter of the company and is held to be equivalent to a special act of the Legislature. (*Ellerman v. Chicago Junc. Ry., &c., Co.*, 49 N. J. Eq., 217; *Oregon R. R. Co. v. Oregonian R. R. Co.*, 130 U. S., 1.)

It is to a certain extent—

- (1) A contract between the corporation and the State. (*Montclair v. Greenwood Lake R. R. Co.*, 45 N. J. Eq., 436.)
- (2) A contract between the individual stockholders and the corporation. (*Kean v. Johnson*, 9 N. J. Eq., 401; *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq., 440.)
- (3) A contract between the stockholders themselves. (*In re election of Directors of Newark Library Ass'n*, decided by Supreme Court, June Term, 1899.)

The courts of the State of New Jersey enunciate no rule or principle substantially different from the general principle governing corporations upon these three points.

In view of the fact that as between stockholders themselves the minority may prevent any practical diversion of the entire property of the company from the business for the purpose for which the company was organized, may prevent a sale of its entire property on the principle that this would work a practical dissolution of the company in a manner other than that prescribed by statute and without their consent, it may in some cases avoid the embarrassment which might arise from the objection of a minority of stockholders if there be inserted in the certificate itself a provision substantially as follows: "With the consent in "writing and pursuant to the vote of the holders of a majority of the stock "issued and outstanding, the directors shall have power and authority to "sell, assign, transfer or otherwise dispose of the whole property of this "corporation."

The insertion of this provision in the certificate of incorporation and the making this a part of the fundamental contract between the stock-

§ 8 holders puts the minority in a less favorable position to unreasonably object to the plans of a concurrent majority.

Charter cannot be attacked collaterally.—"It is further treated as settled by our cases, that the regularity of the organization of a corporation cannot be questioned collaterally in any court, at the instance of a private person, and that irregularities and omissions in such organization cannot be taken advantage of in a proceeding instituted by a private person, but only in a direct proceeding in behalf of the State, inquiring by what warrant the corporate grant is being used." (*Elizabethtown Gas Light Co. v. Green*, 49 N. J. Eq., 329, 331, citing *National Docks R. R. Co. v. Central R. R. Co.*, 32 N. J. Eq., 755; *Stout v. Zulick*, 48 N. J. Law, 599; *West Jersey R. R. Co. v. Cape May, &c.*, 34 N. J. Eq., 164; *Terhune v. Midland R. R. Co.*, 38 N. J. Eq., 423; *Jersey City Gas Light Co. v. Consumers' Gas Co.*, 40 N. J. Eq., 427; *New Jersey Southern R. R. Co. v. Long Branch*, 39 N. J. Law, 28. See also *Stockton v. American Tobacco Co.*, 55 N. J. Eq., 352.)

Quo warranto is the proper proceeding.

I. **Corporate name.**—It is permissible for a corporation to assume the name used by the incorporators as a firm name, or an individual name may be used. The name must not contain the words "insurance," "safe deposit," "trust" or "bank" (p. 127, *post*).

This subdivision was amended in 1898 by inserting the word "existing," so as to forbid the use of the name, "another existing corporation." This was in accordance with the ruling of the Secretary of State's office that the name of a corporation which has been dissolved might be appropriated by another corporation.

The court of chancery will restrain a domestic corporation from using a name so similar to that of another domestic corporation as to lead to uncertainty or confusion. (*Glucose Sugar Refining Co. v. American Glucose Sugar Refining Co.*, 22 N. J. Law Journal [May, 1899], p. 147.)

A contract is not void because the corporation with which it is made is misnamed therein. (*Hoboken Bld'g Ass'n v. Martin*, 13 N. J. Eq., 427; *Woolwich v. Forrest*, 2 N. J. Law, 107; *Middletown v. McCormick*, 3 N. J. Law, 92. See also (as to grants), *Inhabitants, &c., Alloway's Creek v. String*, 10 N. J. Law, 323; *Den v. Hay*, 21 N. J. Law, 174, and (as to bequests), *Van Wagenen v. Baldwin*, 7 N. J. Eq., 211; *McBride v. Elmer*, 6 N. J. Eq., 107; *Goodell v. Union Assn.*, 29 N. J. Eq., 32; *Lanning v. Sisters of St. Francis*, 35 N. J. Eq., 392.)

It was held in *Alexander v. Berney*, 28 N. J. Eq., 90, that "a corporation may assume a name by usage." (For a somewhat similar case see *Den v. Helmes*, 3 N. J. Law, 600.)

II. Registered office in the State.

The Act of 1875 required the place of business, both within and without the State of New Jersey, to be given; also the portion of the business of the company to be conducted outside of the State.

In 1898 this section was amended in its present form.

The object of the amendment was to require the certificate of incorporation to state the exact location of the principal office.

In addition, by Chap. 173 of the Laws of 1898 (see 43*a*, p. 59), it is required to state the name of the agent in the principal office, and in charge thereof, and upon whom process against the corporation may be served. It is usual to state it in this form: "The location of the principal office in
"this State is at No. street, in the City of
"County of . The name of the agent therein and in
"charge thereof, and upon whom process against the corporation may be
"served, is ."

The policy of the State of New Jersey, as indicated by the Act of 1898, is first to compel all corporations to have a registered office in the State of New Jersey and with a known and published agent in charge thereof, authorized to transfer stock and to receive process against the corporation, and then to give corporations power to do business anywhere out of the State of New Jersey and in foreign countries without designating any place of business out of the State. The agent may be changed from time to time by the directors.

So far as the laws of New Jersey are concerned, corporations have no principal office outside the State of New Jersey. They have the full right to do business anywhere out of the State, providing suitable provision is made in the charter. (*Vide* Section 7.)

III. Objects.—Companies may be formed under this act for any lawful purpose or purposes except such as are expressly prohibited by Section 6, *ante*, and probably others not recited in that section, for which separate acts have been provided.

Associations not for pecuniary profit are required to be organized under Chap. 181, Laws of 1898 (P. L. 1898, p. 422).

This section formerly read "the objects for which," etc. This amendment and the amendment of Section 6 in 1899 were intended to answer affirmatively the question which has been frequently asked, whether a company may be formed under this act for more than one object or purpose.

This being the important part of the certificate of incorporation, great care should be taken that the objects and purposes of the company are stated in the fullest and clearest manner possible, because the company cannot undertake any business not authorized by its charter, and not even the fullest sanction given by the shareholders will make valid an act which is outside the powers of the company. Directors undertaking any such business may become personally liable for loss, and great inconvenience follows from companies having too limited powers. It is often questioned how far it is necessary to detail in extenso in the certificate of incorporation the powers of the company. The answer is plain.

The balance of disadvantage decidedly attaches to too narrowly defined objects.

§ 8 It is easier to compress, so to speak, the business of a company within the limits of large objects and broad powers than to develop business by extension in the face of narrowly defined objects. It is better to give latitude to the objects and powers as contained in the certificate of incorporation, and to limit the powers of directors by the by-laws, than to run the risk of the subsequent insertion in the by-laws or in the minutes of the board of directors of a provision intended to meet some pressing requirements of the business, which provision may be found absolutely worthless, because of variations from the terms of the certificate of incorporation.

It is customary to insert some general words, such as "in general to carry on any other business whether manufacturing or otherwise." But it must be understood that the courts will limit such words to cover only operations of a nature similar to the business previously mentioned, and will not include any wholly fresh business.

It is often sought to broaden the powers by inserting such words as, "to do any other business which the company from time to time determine." But it is doubtful whether they add anything to the powers of the company.

IV. **Stock.**—There is no limit as to the amount of capital stock which a corporation formed under this act may have. It is necessary that the total amount should be not less than \$2,000, and it is necessary that \$1,000 of stock should be subscribed by the incorporators, this constituting the amount of capital stock with which the company will commence business. The par value of the shares may be fixed at any amount.

This section, before it was amended, required "the amount" with which the company would commence business to be stated. It was thought by many that this required that the company should have at least \$1,000 paid into its treasury before it could commence the business for which it was incorporated. The company may commence business at once and may call the subscriptions to its capital stock at such time as it finds convenient. The law does not require that this \$1,000 shall be paid in cash. It may be paid in property if the directors so decide. One of the subscribers may pay the subscriptions of the others, in cash or property. (*Vail v. Phillips*, 14 N. J. L. J., 45.) The capital stock subscribed by the incorporators should not be more than two-thirds preferred stock.

There is no liability for any part of the capital stock by the stockholders until subscribed, and the stock is not taxable until issued. In view of the fact that the cost of filing the certificate of incorporation is the same (*i. e.*, \$25) for any amount of total authorized capital not exceeding \$125,000, it is customary in anticipation of extension and growth of corporate business to insert in the certificate power to issue stock to the amount of not less than \$100,000 or \$125,000. The company may then issue stock up to the amount limited without filing a certificate of

increase of capital stock, as is required by Section 27 where the total authorized capital is increased. § 8

Where there is more than one kind of stock the certificate of incorporation should contain the designation and description of each class and state the terms on which each class is to be issued. Preferred stocks may, if desired, be made subject to redemption at not less than par at a fixed time and price (Sec. 18). Dividends on preferred stock may be fixed at any rate not exceeding 8 per cent. Special voting powers may be given to the holders of any class of stock. For a description of some of the kinds of preferred stock which may be created see notes to Section 18, *post*.

V. Names and post office addresses of incorporators.—There must be at least three incorporators, who must be natural persons. It is not necessary that any of them should be a resident of the State of New Jersey. (*Central R. R. of N. J. v. Penn. R. R. Co.*, 31 N. J. Eq., 475.)

This section formerly required the *residence* of each incorporator to be given. This was changed to *post office address* in the section as amended and, therefore, this section is subject to the operation of Chapter 173 of the Laws of 1898 (Section 43a, *post*), by which it is provided that the post office address of the principal office of the company may be given instead of the post office address of the stockholder in any certificate filed. By this means incorporators residing in other States are not required to make public their addresses for the benefit of the tax authorities of those States.

This subdivision also requires that the aggregate of the subscriptions of the incorporators shall be the amount of capital stock with which the company will commence business, which is required to be stated under the preceding subdivision.

VI. Duration.—Formerly the maximum period of duration was fifty years, but by the Revision of 1896 this limitation was stricken out and the existence, if not limited in the certificate of incorporation, is perpetual. This section before the amendment required the certificate of incorporation to state "the date on which the existence of the corporation shall begin." Inasmuch as Section 10, however, provides that the corporate existence begins on filing the certificate in the office of the Secretary of State it was deemed wise to strike out these words and avoid confusion. The fixing of any other date in the certificate would be inconsistent with Section 10 and therefore of no effect.

VII. Additional powers.—This is one of the most important provisions of the Corporation Act and around it centres the skill of counsel for corporations in drawing charters and in effectively laying the foundation of the corporate structure. It will be noted that under this section as amended incorporators may insert provisions "creating, defining, limiting

§ 9 "and regulating the powers of the corporation," &c. The words "creating" and "defining" are new, and it is believed go a step beyond all other enabling acts in this respect. They carry to its logical result the principle laid down in *Ellerman v. Chicago Junc. Ry., &c., Co.*, 49 N. J. Eq., 217, that the certificate of incorporation is equivalent to a special act of the Legislature.

This practically puts it in the power of the incorporators to decide for themselves the powers which the corporation shall have in addition to the powers expressly given by the act and is in effect a delegation to them of the lawmaking power of the Legislature. It is conceived that under this section provision may be made for cumulative voting, or for any other power which though not expressly permitted by the act is not inconsistent with it. Can power to form voting trusts be thus given? (See p. 51, *post.*)

This provision may also be construed as meaning that whereas incorporators are enabled to create and define the powers which the corporation shall possess, in addition to those given by Section 1, that the certificate of incorporation shall then become the measure of the company's powers, and that powers not expressly or impliedly given by it are excluded.

Various limitations and regulations of the powers of the corporation, the stockholders and the directors may be made; power may be given to the directors to make and alter by-laws (Sec. 11); directors may be classified (Sec. 12); right to choose a class of directors may be conferred on any class of stockholders (Sec. 12); the amount of interest required to be represented at any meeting in order to constitute a quorum may be prescribed, provided it is not more than a majority of shares (Sec. 17); power to the directors to sell or mortgage any or all of the corporate property without the assent of the stockholders or with the assent of a majority or two-thirds of the stockholders; restrictions on the power of stockholders to examine the corporate books of account; it may be provided that each stockholder should have one vote for each five shares of stock held by him instead of one vote for each share (Sec. 37). Other similar limitations and regulations might be made.

9. Authentication and record of certificate. Copy evidence.

The certificate of incorporation shall be proved or acknowledged as required for deeds of real estate, and recorded in a book to be kept for that purpose in the office of the clerk of the county where the principal office of such corporation in this state shall be established, and, after being so recorded, shall be filed in the office of the secretary of state; said certificate, or a copy thereof, duly certified by the secretary of state, shall be evidence in all courts and places.

P. L. 1846, p. 65; P. L. 1849, pp. 300, 301; Act of 1875, § 12.

Within the State of New Jersey the acknowledgment may be taken by the Chancellor, a Justice of the Supreme Court, a Master in Chancery, a Judge of any Court of Common Pleas, a Commissioner of Deeds, a clerk of the Court of Common Pleas of any county, a Deputy County Clerk, a Surrogate or Deputy Surrogate of any county, or a Register of Deeds of any county. ("An Act respecting conveyances [Revision of 1893]." § 22, P. L. 1898, pp. 670, 678.)

All acknowledgments must be in the form prescribed by the New Jersey statute (see *form post*).

A Notary Public in New Jersey has no authority to take an acknowledgment.

Acknowledgments out of New Jersey should, if practicable, be taken by a Master in Chancery of New Jersey or by a Foreign Commissioner of Deeds for New Jersey residing in the place where the acknowledgment is taken. If a Master in Chancery or Commissioner is not available the acknowledgment may be taken by a Notary Public or other officer, but in such case it is necessary to attach to the certificate of acknowledgment a certificate of the County Clerk or other officer performing similar duties, substantially as follows ("An Act respecting conveyances [Revision of 1898]," § 23).

State of _____ } ss.
County of _____ }

I, _____, Clerk of the County of _____, and also Clerk of the _____ Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That _____, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment, a Notary Public in and for said County, duly commissioned and sworn, and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for lands, tenements or hereditaments in said State of _____. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
the seal of the said Court and County, the _____ day of _____
189 .

[L. S.]

Clerk.

See further as to taking acknowledgments out of the State, P. L. 1898, pp. 678-q.

The omission of an immaterial part of the acknowledgment by an incorporator, as a failure to state that the contents of the certificate were made known to him and the omission of a certificate of Notaryship to state that the Notary was authorized by the laws of his State to take acknowledgments and proof of deeds do not render the incorporators liable as partners. (*Stout v. Zulick*, 48 N. J. Law, 599.)

10. Corporate existence begins on filing certificate.

Upon making the certificate of incorporation and causing the same to be recorded and filed as aforesaid, the persons so asso-

§ 10 ciating, their successors and assigns, shall from the date of such filing be and constitute a body corporate by the name set forth in said certificate, subject to dissolution as in this act elsewhere provided.

P. L. 1846, p. 65; P. L. 1849, p. 301; Act of 1875, § 13.

Under this section of the Revision of 1896, the corporate existence begins on filing the certificate, and it is not lawful to insert in the certificate any other or different date as to beginning of corporate existence.

This Section 10 is a substitution for Section 13 of the Act of 1875, which provided that the incorporators might insert the time when the company would begin business. Reference is made to the case of *Vanneman v. Young* (52 N. J. Law, 403) because that case is often cited as authority for the proposition that a corporation may begin business before the recording and filing of its certificate in the office of the Secretary of State. Section 10, in the Revision, repealing Section 13 of the Law of 1875, did away with the effect of *Vanneman v. Young* in that particular.

De facto corporations.

The law on this point is stated in the case of *Stout v. Zulick* (48 N. J. Law, 599, 601) as follows: "In the absence of a statutory provision making shareholders liable in case of failure to comply with the requirements of the charter, or with the requirements of the act under which the company is incorporated, persons who have contracted with a *de facto* corporation, as a corporation, cannot deny its corporate existence in order to charge its shareholders individually as partners. * * * Where it is shown that there is a charter or a law under which a corporation with the powers assumed might lawfully be incorporated, and there is a *colorable compliance* with the requirements of the charter or law and a *user* of the rights claimed under the charter or law, the existence of a corporation is established.

"And it is entirely settled that the corporate existence of such corporation *de facto* cannot be inquired into collaterally. It is, as to all who contract with it, to be assumed to be a corporation *de jure*. The legality of its corporate existence may be inquired into by the State, but not by any one else. And this is as true where the corporation is formed under a general law as it is where the corporate existence is claimed under a special charter. * * * Had this suit been brought against the company it could not have denied its corporate existence, neither can the plaintiffs, who contracted with it as a corporation, do so." (See also *Hackensack Water Co. v. De Kay*, 36 N. J. Eq., 548; *Rafferty Rec'r v. Bank of Jersey City* 33 N. J. Law, 368; *Stockton v. American Tobacco Co.*, 55 N. J. Eq., 352.)

As pointed out above (p. 18), a Court of Equity is not the proper tribunal to inquire into the validity of such organization. The action must be brought in a Court of Law, on *quo warranto*, or information in the nature of *quo warranto*, by the Attorney-General in behalf of the State.

11. By-laws.

The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the directors; by-laws made by the directors under power so conferred may be altered or repealed by the stockholders

New. Cf. Act of 1875, § 45.

See note to Section 1, p. 4 *ante*.

12. The business of every corporation shall be managed by its directors, who shall respectively be shareholders therein; they shall be not less than three in number, and, except as hereinafter provided, they shall be chosen annually by the stockholders at the time and place provided in the by-laws, and shall hold office for one year and until others are chosen and qualified in their stead; but by so providing in its certificate of incorporation, any corporation organized under this act may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; *provided*, that no class shall be elected for a shorter period than one year or for a longer period than five years, and that the term of office of at least one class shall expire in each year; any corporation which shall have more than one kind of stock, may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class upon the stockholders of any class or classes, to the exclusion of the others; one director of every corporation of this state shall be an actual resident of this state, and it shall not be necessary for more than one director to be a resident of this state, notwithstanding the provisions of any special charter or other act.

P. L. 1846, pp. 65, 66; P. L. 1849, p. 302; P. L. 1872, p. 89; Act of 1875, § 16; P. L. 1881, p. 122; P. L. 1889, p. 412; P. L. 1892, p. 90; P. L. 1893, p. 444.

Unless the certificate of incorporation contains limitations upon the powers of the directors, the executive power of the corporation is vested in the board of directors. Vice-Chancellor Pitney said in *Loewenthal v. Rubber Reclaiming Co.* (52 N. J. Eq., 445):

"In this connection it is worthy of remark that the stockholders, as such, have no power to make any contract or execute any work. Their power is confined to electing directors and advising them in their conduct of the business of the company."

In *Plaquemines Tropical Fruit Co. v. Buck* (52 N. J. Eq., 219, at p. 238) Vice-Chancellor Green uses the following language:

"It may sometimes become necessary in the transaction of some kind of business of a corporation to have the consent of all the stockholders, or of a certain proportion of them, and resolutions giving such consent or advice have the effect of empowering the directors to act. *But the board of directors is the legal executive, recognized as such not only in practice and on principle, but by the statute.*"

"If stockholders in a corporation disapprove of the company's management, conducted without fraud or gross abuse of trust, or consider their speculation a bad one, their remedy is to elect new officers or sell their shares and withdraw." (McGill, C., in *Benedict v. Columbus Construction Co.*, 49 N. J. Eq., 23.)

"Individual stockholders cannot question, in judicial proceedings, corporate acts of directors if the same are within the powers of the corporation, and, in furtherance of its purposes, are not unlawful or against good morals, and are done in good faith and in the exercise of an honest judgment. Questions of policy of management, of expediency of contracts or action, of adequacy of consideration not grossly disproportionate, of lawful appropriation of corporate funds, are left solely to the honest decision of the directors if their powers are without limitation and free from restraint. To hold otherwise would be to substitute the judgment and discretion of others in the place of those determined on by the scheme of incorporation." (Green, V.-C., in *Ellerman v. Chicago Junction, &c., Co.*, 49 N. J. Eq., 217, 232. See also *Edison v. Edison United Phonograph Co.*, 52 N. J. Eq., 620.)

The board of directors must act as a board. A single director has no power merely by virtue of his office. For any power he undertakes to exercise he must get authority from the board. (*Titus v. Cairo and Fulton R. R. Co.*, 37 N. J. Law, 98.)

A majority of the directors of a corporation, in the absence of any regulation in the charter, is a quorum, and a majority of such quorum when convened can do any act within the power of the directors. (*Wells v. Rakway White Rubber Co.*, 19 N. J. Eq., 402; *Barnert v. Paterson*, 48 N. J. Law, 400; *Met. Tel. Co. v. Dom. Tel. Co.*, 44 N. J. Eq., 573; *Cadmus v. Farr*, 47 N. J. Law, 208.)

Beyond the powers conferred upon them by the charter and the powers of the corporation itself the directors cannot go. Within that scope their discretion is controlling, and a court of equity will not interfere at the instance of dissatisfied stockholders with the exercise of their judgment. But while they have these broad powers they must exercise them for the benefit of the company, and not for their own benefit. They are trustees for the stockholders, and being trustees they can make no binding contracts with the company. An express contract between a director and the corporation is not void, but voidable, to be avoided at the option of the *cestui que trust*, exercised within a reasonable time. It matters not whether the contract be fair and honest and to the advantage of the company. Said Mr. Justice Dixon, in the case of *Stewart v. Lehigh Valley R. R. Co.* (38 N. J. Law, 505, at p. 522): "The vice which inheres in the judgment of a judge in his own cause contaminates the contract; the

"mind of the director or trustee is the forum in which he and his *cestui que trust* are urging their rival claims, and when his opposing litigant appeals from the judgment there pronounced that judgment must fall. "It matters not that the contract seems a fair one. Fraud is too cunning "and evasive for courts to establish a rule that invites its presence * * * "nor is it proper for one of a board of directors to support his contract "with his company upon the ground that he abstained from participating "as director in the negotiation for and final adoption of the bargain by his "co-directors, the very words in which he asserts his right declares the "wrong; he ought to have participated, and in the interest of the stock "holders, and if he did not, and they have thereby suffered loss, of which "they shall be the judges, he must restore the rights he has obtained—he "must hold against them no advantage that he has got through neglect "of his duty toward them." (See also *Guild, Ex'r, v. Parker, Rec'r* 43 N. J. Law, 430; *Elkins v. Camden & Atl. R. R. Co.*, 36 N. J. Eq., 467 at p. 470; *Gardner v. Butler*, 30 N. J. Eq., 702; *Stroud v. Consumers Water Co.*, 56 N. J. Law, 422, 427. See also *Hickman v. Hickman Hose Co.*, 13 N. J. L. J., 111.)

This rule, however, is for the benefit of the corporation, and as to others the contract is valid and enforceable. (*Barnes v. Trenton Gas Light Co.*, 27 N. J. Eq., 33; *Stratton v. Allen*, 16 N. J. Eq., 229.) And so where the director of a bank, who was also a member of a firm, offered a note belonging to the firm to the bank, for discount, which was procured from the maker by fraud, of which he as a member of the firm had notice, it was held that the knowledge of the director was not constructive notice to the bank, such director not having acted with the board in making the discount and not having communicated his knowledge to any of the officers of the bank. He was regarded in the transaction as a stranger. (*First Natl. Bank of Hightstown v. Christopher*, 40 N. J. Law, 435.)

A director of two corporations which contract with each other is incapacitated to take part in settling the terms of the contract. (*Met. Tel. Co. v. Dom. Tel. Co.*, 44 N. J. Eq., 568, 573.)

Where the corporation is insolvent the directors are trustees for the creditors. (See Section 64 and notes.)

By statute (P. L., 1895, p. 166, Section 64 of the Revision of 1896) corporations are prohibited from conveying or assigning any of their assets after they have become insolvent or suspended their ordinary business for want of funds to carry on the same. But even before the passage of this statute a board of directors of an insolvent company could not prefer one of its own members. "The weight of authority is in support of the whole—"some rule that the directors of an insolvent corporation are trustees of "its funds for its creditors * * * by no act of such director can he "obtain a position superior to that of the other creditors for whose benefit "he holds the trust assets." (*Montgomery v. Phillips*, 53 N. J. Eq., 203, 217. *Wilkinson v. Bauerle*, 41 N. J. Eq., 635. *Savage v. Miller*, 56 N. J. Eq., 432.)

"Equity regards the property of a corporation as a fund held in trust "for the payment of its debts, and if other than *bona fide* creditors of the "corporation, or purchasers, possess themselves of it, they take it charged

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"with this trust, which a court of equity will enforce against them. This is now a well-recognized rule of equity jurisprudence." (*Natl. Trust Co. v. Miller*, 33 N. J. Eq., 155, 163.)

"The directors of an incorporated company cannot speculate with the funds or credit of the company, and appropriate to themselves the profits of such speculations. They cannot, in making sales or purchases for the company, take advantage of their position as directors, and either directly or indirectly speculate upon the company. If they are the only persons interested as stockholders, yet, if such speculations impair the capital stock, and have a tendency to substitute a fictitious for a real value, such transactions are opposed to the policy of their act of incorporation, and cannot, in any manner be countenanced by a court of equity." (*Redmond v. Dickerson et al.*, 9 N. J. Eq., 507, 516.)

Qualification of directors.—As to this point see note to Section 39.

Annual elections.—"That provision of the charter, which declares that annual meetings of the stockholders shall be held for the election of directors, grants to the stockholders a highly important and valuable right, which the directors can neither defeat nor impair * * * The right, therefore, to change the day for the annual meeting is one which, from its very nature, can alone be exercised by the stockholders. No board of directors can, without the stockholders' consent, hold office for a period longer than one year." (*Elkins v. Camden & Atl. R. R. Co.*, 36 N. J. Eq., 467; *Archer v. American Water Works Co.*, 50 N. J. Eq., 33.)

Chancellor Green, in *Hilles v. Parrish*, 14 N. J. Eq., 380, declared that any action by the directors of a corporation, which was designed to retain themselves in office, and thus perpetuate their control over the affairs of the corporation, against the will of the holders of a majority of the stock, was illegal and void, and that the injured stockholders, in such a case, were entitled to relief by injunction.

Classification of directors.

The classification provided for by the statute is twofold:

1. **Classification by terms**, the effect of which is to continue the directors in office for a longer term than one year and to cause the board to rotate in classes, so that in no one year can the personnel of the entire board be changed.

2. **Classification by stock**, by which one class of stock elects a certain number of directors to the exclusion of the others. Thus it is possible to place the control of the company, to the extent of electing a majority of the directors, in any class of the stockholders, whether that class be a majority or a minority of the whole stock.

A prerequisite of this under the statute is that there shall be more than one class of stock: thus, if one-third of the stock be preferred, as against two-thirds of the common, it would be lawful and not uncommon to provide that a majority of the directors shall be elected by the preferred stock. Either classification may be used without the other, or both may be combined. The following clause is from the charter of a well-known company:

“There shall be seven directors of the company, divided into two classes in respect to the time for which they shall severally hold office. § 13
 “The first class, composed of four members, shall be chosen exclusively by the holders of the preferred stock for the time being, and shall hold their offices for the term of two years, and until the election of their successors, and the second class, composed of three members, shall be chosen exclusively by the holders of the general or common stock for the time being, and shall hold their offices for the term of one year, and until the election of their successors. The successors of the directors of said two classes respectively shall be chosen by the holders of the preferred stock and by the holders of the general or common stock as aforesaid, so that four of the directors shall at all times be chosen by the holders of the preferred stock and three of the directors by the holders of the general or common stock.”

Executive committee.—The power of directors of a corporation to delegate their authority to committees, in the absence of express power of delegation contained in the certificate of incorporation, is not yet fully settled in this State. The general rule is, that directors may not delegate authority in matters committed to their discretion and judgment.

It would seem from the case of the *Metropolitan Telephone Co. v. Domestic Telegraph Co.* (44 N. J. Eq., 568) that the courts are inclined to relax the rigor of the general rule and to recognize the power of directors to delegate current and ordinary business to a committee. That is now not an uncommon practice among business corporations.

It was held in New York (*Hoyt v. Thompson's Exr.*, 19 N. Y., 207) that a board of twenty-three directors may delegate to a “quorum of any five of their number authority to transact all ordinary business.” (See also *Olcott v. Tioga R. R. Co.*, 27 N. Y., 558; *Sheridan Elec. Light Co. v. Bank*, 127 N. Y., 522.)

To provide in the certificate of incorporation for the executive committee and its powers, the following clause may be used, pursuant to the provisions of Section 8, subdivision VII.:

“The board of directors may, by resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, which committee shall for the time being, to the extent provided in said resolution or in the by-laws of said company, have and exercise the powers of the board of directors in the management of the business and affairs of the company, and may have power to authorize the seal of the company to be affixed to all papers which may require it.”

Provision is sometimes made in the by-laws for an executive committee. The following is from the by-laws of a well-known corporation:

“There shall be an executive committee of three directors, appointed by the board, who shall meet at regular periods, or on notice to all by any of their own number; they shall advise with and aid the officers of the company in all matters concerning its interests and the management of its business, and generally perform such duties and exercise such powers as may be directed or delegated by the board of directors, from time to time, and they shall have authority to exercise all the powers of the board at any time a quorum may fail to attend any regular or special meeting thereof.”

13. Officers.

Every corporation organized under this act shall have a president, secretary and treasurer, who shall be chosen either by the

§ 13 directors or stockholders, as the by-laws may direct, and shall hold their offices until others are chosen and qualified in their stead ; the **president** shall be chosen from among the directors ; the **secretary** shall be sworn to the faithful discharge of his duty, and shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him ; the **treasurer** shall give bond in such sum, and with such surety or sureties, as shall be required by the by-laws, for the faithful discharge of his duty.

P. L. 1846, p. 66; P. L. 1849, p. 302; Act of 1875, § 18.

Powers of officers.—The powers of the officers of a corporation over its business and property are strictly those of agents—powers either conferred by the charter, by-laws or delegated to them by the directors or managers. (*Fifth Ward Savings Bank v. First Natl. Bank*, 48 N. J. Law, 513, 525; *Stokes v. N. J. Pottery Co.*, 46 N. J. Law, 237.)

Stokes v. N. J. Pottery Co., 46 N. J. Law, 237, held that the president is the chief executive officer, and by virtue of his office has authority to perform all acts of an ordinary nature which, by usage or necessity, are incident to his office, and may bind the corporation by contracts in the usual course of business.

Where an officer is clothed with apparent authority, although not inherent in his office, the general doctrine of agency applies, and the corporation may be liable for his acts. The authority of the officer does not depend so much on his title, or on the theoretical nature of his office, as on the duties he is in the habit of performing. (*Fifth Ward Savings Bank v. First Natl. Bank*, 48 N. J. Law, 513, 525; Taylor on Corporations, Sections 202, 236, 244; see also *Blake v. Domestic Mfg. Co.*, 38 Atl. Rep., 241.)

Where a corporation repudiates unauthorized contract of officer it must put other party in *statu quo*. (*Trenton Passenger Ry. Co. v. Wilson*, 40 Atl. Rep., 597.)

As to acts of an extraordinary nature, an officer must have express authority from the board of directors. He cannot confess judgment against the company. (*Stokes v. N. J. Pottery Co.*, 46 N. J. Law, 237.)

Nor has he power to execute a *cognovit*. (*Raub v. Blairstown Creamery Ass'n*, 56 N. J. Law, 262.) The president and cashier of a bank, as such, have no inherent power to execute, in the name and behalf of the corporation, a mortgage or conveyance of real estate. (*Leggett v. N. J. Mfg. & Bkg Co.*, 1 N. J. Eq., 541.)

As to when the corporation is charged with notice from its agent's knowledge, see *Willard v. Denise*, 50 N. J. Eq., 482; *Bank v. Christopher*, 40 N. J. Eq., 435; *Canada Mfg. Co. v. Woodbridge*, 58 N. J. Law, 134.

De facto officers.—Lord Ellenborough's definition (*King v. Bedford Level*, 6 East., 350, 368) of a *de facto* officer as "one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law," is followed in *Mechanics' National Bank v. Burnett Mfg. Co.*, 32 N. J. Eq., 236.

The acts of a *de facto* officer of a corporation are valid—so far, at least, as they create rights in favor of third persons. (*Hackensack Water Co. v. De Kay*, 36 N. J. Eq., 548.) § 13

Mr. Taylor comments on the above cases containing the rule in New Jersey as follows:

"If a body of men acting as a corporation permits certain persons to 'act openly as corporate officers, or if it is permitted by the directors, 'assuming them to have had the power to appoint the officer in question, 'the corporation will not, to the detriment of persons who in good faith 'have acted on the assumption that the persons acting as officers were the 'officers they assumed to be, be permitted to impeach the validity of their 'acts and contracts on the ground that such persons were not legally corporate officers.'" (Taylor on Corporations, Section 189.)

Contracts signed by officers.—The proper way to sign corporate contracts is: The _____ Company,

by _____ President (or other officer as the case may be), and not merely the name of the officer followed by his official title. Such titles are sometimes held to be mere words of description. In New York where a bank discounted for a third party a negotiable promissory note reading "We promise to pay," etc., and signed by the individual names of the parties, with the addition of the words "President" and "Secretary," it was held to be the note of the individuals signing and not the note of the New Jersey company.

The Court held that nothing short of notice, express or implied, brought home to the bank at the time of discounting it that the note was issued as the note of the corporation of which the signers were officers, and was not intended to bind the signers personally, could defeat, on the ground that it was a corporate obligation, the remedy of the bank against the individuals signing. Not only was the note in that case signed by the defendants with the addition of the words "President" and "Secretary," but the name of the company was printed across the end of the note. (*First Natl. Bank v. Wallis*, 150 N. Y., 455.)

In this State, however, the Court of Errors and Appeals held the rule to be that such a note is *prima facie* the note of the individual and not of the corporation, but that parol evidence may be introduced to show whether it really was the personal note of the officer or was the note of the corporation. (*Kean v. Davis*, 21 N. J. Law, 683; *Reeve v. 1st Natl. Bk.*, 54 N. J. Law, 208; see also *Dayton v. Warne*, 43 N. J. Law, 659; *Sheldon v. Dunlap*, 16 N. J. Law, 245; *Den v. Hay*, 21 N. J. Law, 174; *Brown ads. Combs*, 29 N. J. Law, 36; *Simanton v. Vliet*, 61 N. J. Law, 595; *Shotwell v. McKown*, 5 N. J. Law, 973.)

Secretary.—It is the duty of the secretary to keep the minute book of the company. The minutes of a corporation need not be entered up in the handwriting of the secretary; it is sufficient if they are entered under his direction and approved by him. (*Wells v. Rahway White Rubber Co.*, 19 N. J. Eq., 402.)

§ 14-17 14. **The corporation may have such other officers, agents and factors, who shall be chosen in such manner and hold their office for such terms as may be prescribed by the by-laws.**

P. L. 1846, p. 66; P. L. 1849, p. 302; Act of 1875, § 19.

15. **Any vacancy occurring among the directors or in the office of president, secretary or treasurer by death, resignation, removal or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision such vacancies shall be filled by the board of directors.**

If the number of directors is increased the directorships thus created are not vacancies within the meaning of this section. (*In re A. A. Griffing Iron Co.*, 41 Atl. Rep., 931; *State v. Messmore*, 14 Wis., 177.)

As tending to the contrary doctrine see *Walsh v. Commonwealth*, 89 Pa. State, 425; *State v. Askew*, 48 Ark., 89; *Stocking v. State*, 7 Ind., 329; *Gormley v. Taylor*, 44 Ga., 76; *People v. Osborne*, 7 Colo., 605; *State v. McMillan*, 108 Mo., 153.

The validity of a provision in the certificate of incorporation that newly created directorships shall be construed as vacancies and filled by the directors has yet to be established by authority. Compare Section 12 (p. 25, *ante*), which provides that directors shall be *chosen annually by the stockholders*. It is wise and safe to have the stockholders elect such additional directors.

As to the power to fill vacancies at common law see *Kearney v. Andrews*, 10 N. J. Eq., 70.

16. **The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators, designating the time, place and purpose of the meeting, which notice shall be published at least two weeks before the meeting in some newspaper of the county where the corporation is established; or said first meeting may be called without publication if two days' notice be personally served on all the incorporators; or if all the incorporators shall in writing waive notice and fix a time and place of meeting, no notice or publication shall be required.**

P. L. 1846, p. 66; P. L. 1849, p. 302; Act of 1875, § 22; P. L. 1891, p. 113.

Generally the incorporators sign a written waiver of notice, fixing the time and place of meeting. Where all the incorporators but one were present at the first meeting, and he afterwards assented to what was done, the incorporation was held to be valid, although no notice was given (*Babbitt v. East Jersey Iron Co.*, 1 Stew. Dig., p. 208, § 13; not otherwise reported.)

17. **Absent stockholders may vote at all meetings by proxy in writing; and every corporation may determine by its certificate of incorporation or by-laws the manner of calling and conduct-**

CUMULATIVE VOTING.

Certificate of Incorporation may provide for cumulative voting.

Chapter 172 of the Laws of 1900 provides:

1. The certificate of incorporation, original or amended, of any corporation now or hereafter organized under the laws of this state and thereunder issuing or authorized to issue shares of its capital stock, may provide that at all elections of directors, managers or trustees, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors, managers or trustees to be elected, and that he may cast all of such votes for a single director, manager or trustee, or may distribute them among the number to be voted for, or any two or more of them, as he may see fit, which right, when exercised, shall be termed cumulative voting.

2. This act shall not be construed as affecting in anywise the determination of whether or not the right of cumulative voting has been heretofore granted by implication or the right of cumulative voting, if any, granted specifically by special charter or certificate of incorporation.

3. All acts or parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved March 23, 1900.

Cumulative voting is thus allowed on condition that suitable provision is made in the certificate of incorporation.

It does not allow cumulative voting under mere provision of the by-laws to this effect, but such power must be expressly granted by the certificate of incorporation.

ing all meetings, what number of shares shall entitle the stockholders to one or more votes, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting in order to constitute a quorum; *provided*, in no case shall more than a majority of shares or amount of interest be required to be represented at any meeting in order to constitute a quorum; if the quorum shall not be so determined by the corporation, a majority in interest of the stockholders, represented either in person or by proxy, shall constitute a quorum.

P. L. 1846, p. 66; R. S. (Ed. of 1846), p. 139, § 3; P. L. 1849, p. 302; Act of 1875, § 21; P. L. 1891, p. 113.

(See Section 34, *post*.)

Proxy.—The power of attorney need not be in any prescribed form, nor be executed with any particular formality. It is sufficient if it appear on its face to confer the requisite authority, and that it be free from all reasonable grounds of suspicion of its genuineness and authenticity. (*In re Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529.)

Voting.—In the absence of any provision in the certificate of incorporation to the contrary, this section secures to each shareholder one vote for each share of stock held by him and standing on the books of the company. (*Camden & Atlantic R. R. Co. v. Elkins*, 37 N. J. Eq., 273.)

Provision may, it seems, be made in the certificate of incorporation or by-laws requiring each shareholder to hold a certain number of shares to entitle him to one or more votes. (*Locwenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq., 440.)

Such a provision should be made in the original certificate or by-laws, or, if by amended certificate or by-laws, the unanimous consent of the stockholders is essential to its validity.

At common law, "such of the shareholders as actually assemble at a properly convened meeting constitute a quorum for the transaction of business, and a majority of that quorum have authority to represent the corporation." (Morawetz on Corporations, § 475.) The Appellate Division of the Supreme Court of New York (*Matter of Rapid Transit Ferry Co.*, 15 App. Div. R., 530), construing the somewhat similar provisions of the New York Statute, held in a recent case, that as to elections for directors the common law rule was still in force, and that any number of stockholders, however small their holdings, provided they hold a plurality of the stock voted, might elect directors.

Section 34, as amended in 1899, provides that at elections of directors "the persons receiving the greatest number of votes shall be the directors, provided, however, that in all corporations formed under the provisions of this act a majority in interest of all the stockholders shall be present in person or by proxy to constitute a quorum."

18. Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences and voting powers, or restriction or qualification thereof, as shall

§ 18 be stated and expressed in the certificate of incorporation; and the power to increase or decrease the stock, as in this act elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks exceed two-thirds of the actual capital paid in cash or property; and such preferred stocks may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, half yearly or yearly, before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock; unless its original certificate of incorporation shall otherwise provide, no corporation shall create preferred stock, except by authority given to the board of directors by a vote of at least two-thirds of the stock voted at a meeting of the common stockholders, duly called for that purpose; the terms "general stock" and "common stock" are synonymous.

P. L. 1860, p. 603; Act of 1875, § 25; P. L. 1882, p. 252; P. L. 1889, p. 412; P. L. 1889, p. 415; P. L. 1893, p. 445, § 5.

History of the act.—The statutes above cited, showing the origin, history and growth of legislation in the State of New Jersey upon the subject of common and preferred stock, are worthy of examination.

Classes of stock.—Under the Act of 1875 only two kinds of stock were specifically authorized, common and preferred stock. By the supplement of May 9, 1889 (P. L. 1889, p. 415), a third form of stock, called guaranteed stock, was authorized to be issued for the purchase of property. The present act is broad and authorizes the creation of a number of kinds of stock and classes "with such designation, preferences and "voting powers, or restriction or qualification thereof, as shall be stated "and expressed in the certificate of incorporation," the only restriction being that the total amount of preferred stocks at any time shall not exceed two-thirds of the paid up capital. (See Section 8, subdivisions IV. and VII., p. 16, *ante*.)

The intention of the Legislature is to divide stock into classes:

First, common or general without preferences of any kind.

Second, stock with preferences.

Stock of the last class may be of various kinds, may be preferred as to dividends, as to capital (either or both) or otherwise. Such stock may

have a restriction or qualification of voting powers. The power to vote may be wholly taken from any class of stock. (*Miller v. Ratterman*, 24 N. E. Rep., 496, [Ohio, 1890.]) § 18

This stock with preferences may have any name and designation that the stockholders see fit to give to it. The restriction in the statute means that every company must always have at least one-third of the stock issued and outstanding, full paid common stock.

Heretofore it was assumed by some that "guaranteed stock" issued pursuant to the Act of 1889 (P. L. 1889, p. 415) could be issued in any amount, yet this was a mistaken theory, because guaranteed stock is nothing more nor less than another kind of preferred stock. (Cook on Stock, Vol. 1, Section 267.)

The terms of these preferences and qualifications and restrictions must be stated in the certificate of incorporation and it is wise to insert them as well in the certificates of stock in order that there may be no question about the holder's having full notice of the terms, conditions and limitations of the stock.

One more suggestion is pertinent. All preferences as to dividends and guarantees of dividends are contingent; they must be made payable only out of the net profits of the company and can be paid in no other way.

They are not a debt of the company to the stockholders until after the net profit had been made and the surplus arising therefrom is in hand and applicable to the payment of dividends. There is no such thing as absolute interest bearing stock under the laws of New Jersey. In other words, there is no law in New Jersey which allows stockholders of one class to agree with stockholders of another class that they will absolutely pay them dividends, or pay them interest, whether earned or not.

The same result has sometimes been sought to be accomplished in another way through the medium of separate companies and by the guaranteeing of the payment of dividends of the stock of one company by the other company.

Founders' shares.—Founders' shares, as they are called in England, may now be created. They are in common use in England and have been traced back as far as 1873. They are practically unknown in the United States. (Cook on Corporations, Section 14.)

They are ordinarily issued to founders or to promoters to remunerate them for guaranteeing to place the shares of the company offered for public subscription. They are also occasionally issued as part consideration of the purchase of property, especially as consideration for the good will of an existing business. Then, too, they are sometimes held out as an inducement to subscribers for the ordinary or common shares.

In England it was declared in *re Faure Electric Accumulator Co.* (40 C. Div. 141, 1888) that a company could not pay commissions to its promoters for placing its capital. Since that time founders' shares have been extensively used as a means of remunerating promoters.

While stock may not, except under Section 50 (see p. 74), be issued directly for services rendered, yet there is nothing to prevent the creation

§ 18 of *founders' shares* and authorize their issue at par to founders or to promoters. Being issued at par the difference between the par value and the true value is the compensation to the founders or promoters.

Holders of founders' shares are usually entitled *pro rata* with the holders of the ordinary shares to a certain annual dividend, say 6 per cent., and then as a class to a fixed proportion of the surplus, a third or half, as the case may be. For instance, a company is formed with a capital of \$100,000, of which \$99,000 are ordinary shares, and \$1,000 are founders' shares, the founders' shares being entitled to one-half of the surplus, after 6 per cent. has been paid to all shareholders, ordinary and founders. If the company makes \$10,000 the first year, the ordinary shares get \$5 940 and the founders' shares get \$60, but the surplus of \$4,000 is divided equally between the two *classes* of shareholders. The founders' shares thus get \$2,000 more, making a total dividend of 206 per cent.

From the standpoint of the founders' shares it is wise to provide in the certificate of incorporation that the directors *shall*, on a specified day or days in each year, declare dividends of the whole of the accumulated profits, in accordance with the provisions of the certificate after reserving a specified percentage as working capital, payable to the stockholders on demand. Such a provision would create a vested right in the shareholders and could not be altered without their consent.

Also to provide in the certificate of incorporation that on winding up, the holders of founders' shares shall be paid first, and also share in a fixed proportion of the surplus, after paying the debts and par value of all shares. (*McGregor v. Home Ins. Co.*, 33 N. J. Eq., 181.)

Provision may also be made in the certificate of incorporation, by virtue of this section, giving the holders of founders' shares special voting powers, as for example the power to elect exclusively a class of directors. (Sec. 12.)

In drawing the certificates of stock where there are different or special classes great care should be exercised and the rights of the respective classes should be set out in detail.

Rights of preferred stockholders on winding up. — Section 86, *post*, provides that on dissolution "the surplus funds, if any, after payment "of creditors, and the costs, expenses and allowances, and *the preferred* "stockholders, shall be divided and paid to the general stockholders "proportionally, according to their respective shares." *McGregor v. Home Ins. Co.* (33 N. J. Eq., 181, 186-7), construing this provision in the Act of 1875, held that the legislative intent was that where the law or contract under which the stock is issued does not in any way limit or restrict them, the rights of the holders of the preferred stock were to be first paid the par value of their shares before anything was paid to the general stockholders. (*Mayer v. Attorney-General*, 32 N. J. Eq., 815.)

19. **Stock certificate.**

Every stockholder shall have a certificate, signed by the **president** and **treasurer**, certifying the number of shares owned by him in such corporation.

P. L. 1846, p. 67; P. L. 1849, p. 303; Act of 1875, § 23.

For further requirements see Section 18.

A subscriber for stock who has complied with the terms of his subscription, and has paid the assessments, becomes a stockholder and is entitled as of right to a certificate in the form prescribed by the statute. If the corporation refuses he may compel it to give him a certificate. (*Storage Co. v. Assessors*, 56 N. J. Law, 389, 393.)

A certificate is not necessary to constitute the subscriber a shareholder. "The certificate is merely the stockholder's evidence of title to 'his stock. It is not the stock itself, but a convenient representative of 'it.'" (Cook on Stocks, etc., Section 192.) The possession of the certificate by the person in whose name it is issued creates a legal presumption of rightful ownership, which can only be overcome by proof that it was illegally issued or legally forfeited. (*Downing v. Potts*, 23 N. J. Law, 66, 79.)

Where stock is issued for the purchase of property, it is not now necessary to put on the face of the certificate the words "Issued for 'property purchased'"; that requirement of the former act was repealed by the revision.

20. **The shares of stock** in every corporation shall be **personal property**, and shall be **transferable** on the books of the corporation in such manner and under such regulations as the by-laws provide; and **whenever** any transfer of shares shall be **made for collateral security**, and not absolutely, it shall be so expressed in the entry of the transfer.

P. L. 1846, p. 67; P. L. 1849, p. 303; Act of 1875, § 26.

A **share of stock** represents the right which its owner has in the management and profits of the corporation. (*Storage Co. v. Assessors*, 56 N. J. Law, 389.)

Transfer.—The provisions of charters and by-laws, under the statute that stock of the corporation shall be transferable only on the books of the company, are intended for the protection of the company. (*Matthews v. Hoagland*, 48 N. J. Eq., 455, 486.)

"A certificate of stock accompanied by an irrevocable power of attorney, either filled up or in blank, is, in the hands of a third party, 'presumptive evidence of ownership in the holder. And where the party 'in whose hands the certificate is found is a holder for value, without 'notice of any intervening equity, his title cannot be impeached. The 'holder of the certificate may fill up the letter of attorney, execute the 'power, and thus obtain the legal title to the stock, and such a power is 'not limited to the person to whom it was first delivered, but *enures* to 'each *bona fide* holder into whose hands the certificate and power may

§ 21 "pass." (*Prall v. Tilt*, 28 N. J. Eq., 479, 483; *Rogers v. N. J. Ins. Co.*, 9 N. J. Law, 167; *Broadway Bank v. McElrath*, 13 N. J. Eq., 26; *Hunterdon County Bank v. Nassau Bank*, 17 N. J. Eq., 496; *Mt. Holly Turnpike Co. v. Ferree*, 17 N. J. Eq., 117; *Del. & Atl. R. R. Co. v. Irick*, 23 N. J. Law, 321; *State, Bush v. Warren F. Co.*, 32 N. J. Law, 439; *Gibbs v. Craig*, 58 N. J. L., 661, 664.)

The reason of the rule is stated in *Matthews v. Hoagland* (48 N. J. Eq., 455), to be "that the record owner has done everything in his power "to effect the transfer, and by such act has assigned all interest he may "have had and surrendered all *indicia* of ownership. As to third parties, "holders for value, he is estopped from asserting ownership—as to volun- "teers, the gift is complete and irrevocable, if *inter vivos*." (Id., p. 490; see *Walker v. Dixon Crucible Co.*, 47 N. J. Eq., 342.)

Proceedings to compel company to transfer stock.—Ordinarily *mandamus* will not lie to compel the transfer of shares of a corporation to a purchaser, or to compel the company to issue certificates of stock. (*State, Bush v. Warren F. Co.*, 32 N. J. Law, 321; *Galbraith v. Building Ass'ns*, 43 N. J. Law, 389; *State v. Timken*, 48 N. J. Law, 87, 88.) The owner has an adequate remedy in an action for damages. If it should appear, however, that the stock possesses a peculiar and a special value over other stock of the corporation, as, for example, founders' shares, probably *mandamus* would lie. A court of equity will compel the transfer of stock to the equitable owner thereof, upon the books of a corporation, when such transfer is *fraudulently* withheld by the agents of the corporation. (*Archer v. American Water Works Co.*, 50 N. J. Eq., 33.)

21. Stockholders liable until subscriptions are fully paid.

Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations.

P. L. 1846, p. 16; P. L. 1846, p. 68; Act of 1875, § 5.

Individual liability of stockholders did not exist at common law. (*Bank v. Hendrickson*, 40 N. J. Law, 52.)

General creditor's bill.—The meaning of this section, as construed by the Court of Errors and Appeals (*Wetherbee v. Baker*, 35 N. J. Eq., 501) is that, where the capital, *i. e.*, the property of a corporation has proved insufficient to satisfy its debts and obligations, then each stockholder is liable for the amount of his unpaid subscription, or such proportion thereof as shall be necessary to satisfy the debts of the company and meet the expenses of winding up its affairs, but no more. (*Hood v. McNaughton*, 54 N. J. Law, 425, 427; *Cumberland Land Co. v. Clinton Hill Co.*, 42 Atl. Rep., 585.) The unpaid subscriptions constitute a trust fund for the payment of the debts of the corporation. A creditor may file a bill to enforce this liability only after he has exhausted

his remedies at law by judgment, issue of execution and its return unsatisfied. He must sue in behalf of all the creditors of the corporation and not for himself alone; the corporation must be made a party; and all the property and assets of the corporation must be brought into the suit and put in course of administration. The proceedings are in the nature of an equitable accounting. (*Bickley v. Schlag*, 46 N. J. Eq., 533.)

Action at law by receiver.—The stockholders are liable for the payment in full of their subscriptions, if such payment be necessary to discharge the debts of the company. (*Hood v. McNaughton*, 54 N. J. Law, 425.) The Court of Chancery may direct a receiver to make calls and proceed at law to collect the unpaid subscriptions. (*Barkalow v. Totten*, 53 N. J. Eq., 573.) Where the Chancellor decrees the payment of the entire amount of unpaid subscriptions, the validity of the decree cannot be questioned in the law court, as by showing that the entire amount is not necessary to satisfy claims of creditors. If there is a surplus he will distribute it to the stockholders equitably. (*Hood v. McNaughton*, 54 N. J. Law, 425.)

Liability of original subscriber for stock.—The subscription to stock and the acceptance of a certificate for shares constitute a contract between the subscriber and the company by which the subscriber agrees to pay the remaining installments on demand by the corporation. (*Hood v. McNaughton*, 54 N. J. Law, 424.)

From this agreement the subscriber cannot recede without the assent of the company. (Id.)

This assent is evidenced by the consummation, in the form required by the statute, of the transfer by the entry of the name of the transferee on the registry of stockholders in the place of the subscriber, and the delivery of a new certificate to and in the name of the transferee. (Id.)

An original subscriber may transfer his stock without the consent of the company thus evidenced and thereby vest in the purchaser his right in the shares and as between himself and such purchaser cast upon the latter the obligation to pay him such installments as are called upon the stock, but the original subscriber cannot thereby impair or affect the contract rights of the company. (Id.)

His liability to the company does not become extinguished until the purchaser is accepted by the company as the stockholder of record in his place. (Id.)

Liability of transferee of stock.—A distinction is drawn between one who holds the stock by transfer and an original subscriber. The former may, it seems, in the absence of a fraudulent purpose, discharge himself of liability for unpaid installments by due transfer of his shares, although the transfer may not be recorded on the books of the company. (*Hood v. McNaughton*, 54 N. J. Law, 425, 428.)

The latter cannot obtain immunity in that way. (Id.)

Bonus stock.—Holders of stock given as *bonus* are liable on it to creditors, but not to the company. (*Hebberd v. Southwestern Cattle Co.*, 55 N. J. Eq., 18.)

§ 22-23 22. The directors of every corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof; and the sums so assessed shall be paid to the treasurer at such times and by such installments as the directors shall direct, said directors having given thirty days' notice of the assessment and of the time and place of payment either personally or by mail or by publication in a newspaper published in the county where the corporation is established.

P. L. 1846, p. 67; P. L. 1849, p. 303; Act of 1875, § 27; P. L. 1882, p. 252.

It is usual for subscribers for stock to sign a written waiver of the thirty days' notice of payment of assessments, agreeing to pay all or any part of their subscriptions to the treasurer on demand, at such times and in such amounts as the board of directors may determine.

A corporation must comply with all the conditions precedent to payment on the part of the subscribers before a suit can be maintained upon the subscription. Where a subscriber agreed to pay in certain installments, after certain calls, the Court held that there could be no recovery against him without proof that the calls had been duly made. The rule in New Jersey may be stated as follows: A subscriber is not bound to pay for his stock except in the manner prescribed by statute or defined in the charter, or by-laws, unless he waives these requirements. (*Grosse Isle Hotel Co. v. L'Anson's Exrs.*, 42 N. J. Law, 10; aff'd 43 N. J. Law, 442.)

In construing a similar section in the Railroad Act, the Court of Errors and Appeals held that a suit by the company will not lie on a subscription until a call has been duly made. (*Braddock v. R.R. Co.*, 45 N. J. Law, 363, 364; see *N. J. Midland Ry. Co. v. Strait*, 35 N. J. Law, 322.)

Where the company has become insolvent and a receiver has been appointed, the Court of Chancery may direct the receiver to make calls. (*Hood v. McNaughton*, 54 N. J. Law, 425; *Barkalow v. Totten*, 53 N. J. Eq., 573; *Hebberd v. Southwestern Cattle Co.*, 55 N. J. Eq., 18.)

"A call is nothing more than an official declaration that the sums 'subscribed are required to be paid.'" (*Braddock v. R.R. Co.*, 45 N. J. Law, 363.)

The unpaid and uncalled subscriptions for stock cannot be mortgaged or sold by the corporation. Where the call has been duly made, but not collected, an assignment of the amount already called is legal and valid. (Cook on Corporations, Section 111; see *N. J. Midland Ry. Co. v. Strait*, 35 N. J. Law, 322.)

23. If the owner of any shares shall neglect to pay any sum assessed thereon for thirty days after the time appointed for payment, the treasurer, when ordered by the board of directors, shall sell, at public auction, such numbers of the shares of the

delinquent owner as will pay all assessments then due from him, § 24-26
with interest, and all necessary incidental charges, and shall
transfer the shares sold to the purchaser, who shall be entitled
to a certificate therefor.

P. L. 1846, p. 67; P. L. 1849, p. 304; Act of 1875, § 28.

24. The treasurer shall give notice of the time and place
appointed for the sale, and of the sum due on each share, by
advertising the same three weeks successively, once in each
week, before the sale, in some newspaper published in the
county where the corporation is established, and by mailing a
notice thereof to the delinquent stockholder, if he knows his
post office address.

P. L. 1846, p. 67; P. L. 1849, p. 304; Act of 1875, § 29.

Where stock has once been rightfully issued, even though nothing
has been paid on it by the subscriber, it can only be forfeited in the mode
prescribed by the statute, and the procedure prescribed by the statute
must be strictly followed. (*Downing v. Potts*, 23 N. J. Law, 66.)

25. **Certificate upon payment of capital.**

The president and secretary, or treasurer, upon payment of
each installment of capital stock, and of every increase thereof,
shall make a certificate, stating the amount of the capital so paid,
and whether paid in cash or by the purchase of property, stating
also the total amount of capital stock, if any, previously paid and
reported, which certificate shall be signed and sworn to by the
president and secretary, or treasurer, and they shall, within ten
days after such payment, cause the certificate to be filed in the
office of the secretary of state.

P. L. 1846, p. 68; P. L. 1849, p. 304; Act of 1875, §§ 30, 31; P. L. 1893,
p. 444.

No certificate of payment of capital stock is apparently required to
be filed until the full amount of capital stock authorized by the certificate
of incorporation has been paid in, and the words "every increase thereof"
seem to contemplate an increase beyond that amount made by amendment
in pursuance of Sections 27 and 28, *post*. The question has not been
adjudicated, probably because the penalty attaches only after the officers
have refused for thirty days to file the certificate after written request so
to do. The common practice is to file a certificate upon payment of the
amount with which the company commences business, as stated in the
certificate of incorporation, and a further certificate upon payment in full
of the total capital stock authorized.

26. If any of said officers shall neglect or refuse to perform
the duties required of them in the preceding section for thirty
days after written request so to do by a creditor or stockholder of
the corporation, they shall be jointly and severally liable for all
its debts contracted before the filing of such certificate.

P. L. 1846, p. 68; P. L. 1849, p. 304; Act of 1875, § 32.

§ 26a-27

No action can be maintained until thirty days after a written request has been made by a creditor or stockholder of the officers to make a certificate and their neglect or refusal so to do within that time. (*Nassau Bank v. Brown*, 30 N. J. Eq., 478.)

The liability created by this section may be enforced by any creditor who has performed the necessary conditions, by an action of law, or by bill in equity, in the manner prescribed by Sections 92, 94, *post*. (*Waters v. Quimby*, 27 N. J. Law, 296; *aff'd* 28 Id., 533.)

26a. Incorporators may amend certificate of incorporation before payment of capital.

It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to record with the clerk of the county in which its original certificate of incorporation was recorded, and file with the secretary of state, an amended certificate, duly signed, by the incorporators named in the original certificate of incorporation, and duly acknowledged or proved as required for certificates of incorporation under the act to which this is a supplement, modifying, changing or altering its original certificate of incorporation, in whole or in part, which amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; *provided, however*, that nothing herein shall permit the insertion of any matter not in conformity with the act to which this is a supplement; and *provided, however*, that this act shall not in any manner affect any proceedings pending in any court; for filing said amended certificate of incorporation, the secretary of state shall charge a fee of twenty dollars; *provided*, that where the total authorized capital stock of the corporation is increased by said amended certificate the secretary of state shall charge an additional fee of twenty cents for each one thousand dollars of said increase.

(Supplement of April 20, 1898, § 1., P. L. 1898, p. 407.)

There was in the Revision of 1896 no provision for the amendment of a certificate of incorporation before the payment of the capital.

A mistake or omission could only be cured after full organization (see Section 27). This is a substantial re-enactment of Sections 183, 238, 250 and 251, Title "Corporations," General Statutes, all of which were repealed by the Revision of 1896.

27. Amendments and changes after organization.

Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, decrease its capital stock, change the par value of the shares of its capital stock, change the location of its principal office in this

state, extend its corporate existence, create one or more classes § 27
of preferred stock, and make such other amendment, change or
alteration as may be desired, in manner following: the board of
directors shall pass a resolution declaring that such change or
alteration is advisable and calling a meeting of the stockholders
to take action thereon; the meeting shall be held upon such notice
as the by-laws provide, and in the absence of such provision,
upon ten days' notice, given personally or by mail; if two-thirds
in interest of each class of the stockholders having voting powers
shall vote in favor of such amendment, change or alteration, a
certificate thereof shall be signed by the president and secretary
under the corporate seal, acknowledged or proved as in the case
of deeds of real estate, and such certificate, together with the
written assent, in person or by proxy, of two-thirds in interest of
each class of such stockholders, shall be filed in the office of the
secretary of state, and upon the filing of the same, the certificate
of incorporation shall be deemed to be amended accordingly;
provided, that such certificate of amendment, change or alteration
shall contain only such provision as it would be lawful and proper
to insert in an original certificate of incorporation made at the time
of making such amendment, and the certificate of the secretary
of state that such certificate and assent have been filed in his
office shall be taken and accepted as evidence of such change or
alteration in all courts and places.

P. L. 1846, p. 67; P. L. 1846, p. 68; P. L. 1849, p. 303; P. L. 1849, p.
304; Act of 1875, § 33; P. L. 1876, p. 74; P. L. 1876, p. 235; P. L. 1877, p.
22; P. L. 1877, p. 179; P. L. 1878, p. 157; P. L. 1879, p. 88; P. L. 1880, p.
49; P. L. 1883, p. 240; P. L. 1886, p. 226; P. L. 1887, p. 137; P. L. 1887, p.
156; P. L. 1888, p. 224; P. L. 1889, p. 367; P. L. 1891, p. 87; P. L. 1891, p.
392; P. L. 1892, p. 287; P. L. 1892, p. 362; P. L. 1892, p. 12; P. L. 1893, p.
444; P. L. 1895, p. 607.

This section, so far as it relates to changing the location of the prin-
cipal office of the company, has been practically amended by Chapter 85
of the Laws of 1897 (see Section 28a), so that the change may now be made
by resolution of the board of directors alone, upon filing a certificate in
the office of the Secretary of State.

An amendment of the certificate of incorporation before the payment
of any part of the capital stock is authorized by Chapter 172 of the Laws
of 1898 (see Section 26a, p. 42, *ante*).

As to the power of a corporation to make changes in its certificate of
incorporation whereby the rights of shareholders are affected, see *Mere-
dith v. N. J. Zinc & Iron Co.*, 55 N. J. Eq., 211; 16 N. J. Eq., 454; *Pronik
v. Spirits Distributing Co.*, 42 Atl. Rep., 586.

§ 28-28a

Increase of stock.—It has been held that where the capital stock is increased, the original holders are first entitled to subscribe for the increased stock in proportion to their holdings. (Thompson on Corporations, § 2094.) Where the new stock is issued for property purchased, from which all stockholders will receive the same benefit, original holders cannot insist that new stock shall be issued to them in proportion to their holdings, it being held that Section 55 of the Act of 1875 (Section 48, p. 71, *post*) became a part of the contract between the stockholders. In case the corporation deprives the stockholder of his rights in this behalf, the proper remedy is by an action at law for damages. (*Meredith v. N. J. Zinc & Iron Co.*, 55 N. J. Eq., 211; *aff'd* 56 N. J. Eq., 454.)

28. Amendments by corporations under other acts.

Any corporation of this state, whether organized under a special act of incorporation or under general laws, excepting railroad and canal corporations, and other corporations possessing the right of taking and condemning lands, may increase or decrease its capital stock, change its name, the par value of the shares of its capital stock, or the location of its principal office in or out of this state, and fix any method of altering its by-laws permitted by the act to which this is a supplement, in the manner prescribed in the foregoing section, and any corporation may in the same manner relinquish one or more branches of its business, or extend its business to such branches as might have been inserted in its original certificate of incorporation.

(As amended by Chap. 92, Laws of 1898, P. L. 1896, p. 149.)

This section with the amendments of 1898 is intended clearly to cover corporations organized under other acts than the Act of 1875, or the Revision of 1896.

28a. Change of location of office.

The board of directors of any corporation, organized under the laws of this state, may change the location of the principal office of such corporation within this state to any other place within this state by resolution adopted at a regular or special meeting of such board, by the votes of at least two-thirds of the members of such board; *provided*, that no certificate shall be required to be filed of the removal of any office from one point to another in the same town, township or city in this state.

Upon the adoption of a resolution as aforesaid, a copy thereof shall be filed in the office of the secretary of state, signed by the

president and secretary of such corporation, and sealed with its corporate seal; for filing the said certificate, the secretary of state shall charge a fee of five dollars. § 29-30

(Supplement of April 8, 1897, P. L. 1897, p. 175.)

29. **The decrease of capital stock may be effected** by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender by every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock hereinbefore provided, the certificate decreasing the same shall be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for all debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced; *provided*, no such decrease of capital stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted, nor effect any reduction of the taxes that may be required to be paid by the charters of corporations incorporated by special acts.

P. L. 1846, p. 68; P. L. 1849, p. 305; P. L. 1882, p. 139; P. L. 1885, p. 140.

30. **Dividends.**

No corporation shall make dividends, except from the surplus or net profits arising from its business, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of its capital stock, or reduce its capital stock, except according to this act, and in case of any violation of the provisions of this section, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within six years after paying such dividend, to the corporation and to its creditors, in the event of its dissolution or

§ 31 insolvency, to the full amount of the dividend made or capital stock so divided, withdrawn, paid out or reduced, with interest on the same from the time such liability accrued ; *provided*, that any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors, at the time the same was done, or forthwith after he shall have notice of the same, and by causing a true copy of said dissent to be published, within two weeks after the same shall have been so entered, in a newspaper published in the county where the corporation has its principal office.

P. L. 1846, p. 17; P. L. 1846, p. 68; P. L. 1846, p. 69; P. L. 1849, p. 305; Act of 1875, § 7.

Williams v. Boice, 38 N. J. Eq., 364, held that an express statutory provision, holding corporation directors personally responsible for dividends paid out of the capital instead of the profits, does not exonerate the stockholders from liability to repay such dividends for the benefit of the creditors of the corporation. "It is undeniably true, as a general proposition, that stockholders are liable in equity to repay, for the benefit of the creditors of the corporation, money which has been paid to them out of the capital stock. This is not based on any statute, but upon the equitable ground that the stock is regarded as a trust fund for all the debts of the corporation, and no stockholder can entitle himself to any dividend or share of it until all the debts are paid. And the remedy is in equity and not at law." (Id., p. 367.)

31. Voluntary dissolution.

Whenever, in the judgment of the board of directors, it shall be deemed advisable and most for the benefit of such corporation that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, and also beginning within said ten days cause a like notice to be published in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolutions so adopted by the board of directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the after-

**STATE TAXES MUST BE PAID BEFORE
DISSOLUTION.**

Chapter 126 of the Laws of 1900 provides:

1. Hereafter no corporation organized under any law of this state shall be dissolved by its stockholders until all taxes levied upon or assessed against such corporation by the state of New Jersey in accordance with the provisions of an act entitled "An act to provide for the imposition of state taxes upon certain corporations and for the collection thereof," approved April eighteenth, one thousand eight hundred and eighty-four, and all acts amendatory thereof or supplementary thereto, shall have been fully paid, and a certificate to that effect, signed by the comptroller of the treasury, shall have been annexed to and filed with the certificate of dissolution.

2. This act shall take effect immediately.

Approved March 23, 1900.

This act is intended to prevent corporations from dissolving and distributing their assets without paying the taxes already due to the state.

Attempts to do this have of late been not infrequent.

noon of the day so named, and which meeting may, on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting **two-thirds in interest of all the stockholders** shall consent that a dissolution shall take place and signify their **consent in writing**, such consent, together with a list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the office of the **secretary of state**, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, **shall issue a certificate that such consent has been filed**, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in said county; and upon filing in the office of the secretary of state of an affidavit that said certificate has been so published, the corporation shall be dissolved and the board shall proceed to settle up and adjust its business and affairs; **whenever all the stockholders shall consent** in writing to a dissolution; no meeting or notice thereof shall be necessary, but on filing said consent in the office of the secretary of state **he shall forthwith issue a certificate of dissolution**, which shall be published as above provided.

P. L. 1870, p. 8; Act of 1875, § 34; P. L. 1877, p. 20; P. L. 1893, p. 445, § 4.

Where the dissolution is by unanimous consent of all the stockholders, affidavit of publication is apparently not expressly required to be filed with the Secretary of State as a condition precedent legal dissolution, but it is the better practice to file such affidavit.

It rests in the judgment of the directors whether the stockholders shall be called together under this section. "It is well settled that the "shareholders in a corporation cannot extinguish its charter or dissolve "it, and that a court of equity cannot dissolve it at their instance. In the "absence of a statutory provision the franchises can be declared forfeited "and extinguished only at the suit of the state in an appropriate proceed- "ing at law. * * * But when it plainly appears that the object for "which the company is formed is impossible of attainment, it becomes the "duty of the company's agents to put an end to its operations and wind "up its affairs, and should they, even though supported by a majority of "the shareholders, pursue operations which *must* eventually be ruinous, "any shareholder feeling aggrieved would, upon plain equitable principle, "be entitled to the assistance of this court, and a decree should be made "compelling the directors to wind up the company's business and distrib- "ute the assets among those who are entitled to them, unless they can "lawfully be used for other business purposes allowed by the charter." (*Benedict v. Columbus Construction Co.*, 49 N. J. Eq., 23, 36.) See note to forms.

See Sections 53 *et seq.*

§ 32-33

32. **Incorporators may dissolve corporation.**

The incorporators named in any certificate of incorporation, before the payment of any part of the capital, and before beginning the business for which the corporation was created, may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate, verified by oath, that no part of the capital has been paid and such business has not been begun, and surrendering all rights and franchises, and thereupon the said corporation shall be dissolved.

P. L. 1893, p. 444.

III.—Elections ; Stockholders' Meetings.

33. **Stock and transfer books must be kept in registered office; annual list of stockholders.**

Every corporation shall keep at its principal and registered office in this state the transfer books in which the transfer of stock shall be registered, and the stock books, which shall contain the name and address of the stockholders, the number of shares held by them respectively, which shall at all times during the usual hours for business be open to the examination of every stockholder; the directors shall cause the secretary, or other officer designated by them having charge of said books, to make, at least ten days before every election, after the first election, a full, true and complete list, in alphabetical order, of all the stockholders entitled to vote at the ensuing election, with the residence of each, and the number of shares held by each, which list shall at all times during the usual hours for business be kept at such principal and registered office, and open to the examination of any stockholder at said office, and if any officer having charge of such books or list shall, upon demand by any stockholder, refuse or neglect to exhibit such books or list, or submit them to examination as aforesaid, he shall for every such offense forfeit the sum of two hundred dollars, one-half thereof to the use of the state of New Jersey, and the other half to him who will sue for the same, to be recovered by action of debt in any court of record, together with costs of suit, and the books aforesaid shall be the only evidence as to who are the stockholders entitled to examine such books or list, and to vote at such election; and the board of directors shall produce at the time and place of such election such books and list, there to remain during the election,

and the neglect or refusal of said directors to produce the same § 34 shall render them ineligible to any office at such election.

(As amended by Chap. 172, § 3, Laws of 1898; P. L. 1898, p. 408.)

P. L. 1825, p. 81; P. L. 1841, p. 117; P. L. 1846, p. 70; R. S. (Ed. of 1846), p. 139, §§ 1, 4; P. L. 1849, p. 306; Act of 1875, §§ 36-41.

The Acts of 1846 and 1875 required the books to be open to the examination of every stockholder for thirty days previous to any election of directors. The present act requires them to be open *at all times during business hours*.

The Supreme Court in 1851, construing the phrase "books containing the names of the stockholders" in the statute in force at that time (Rev. Stat. 139, Sec. 1), declared that "It includes, therefore, not only the books of original subscription, but the certificate book, and we incline to "think the *stock ledger* also." (*Downing v. Potts*, 23 N. J. Law, 66, 76.)

The amendment of the statute in 1898 rendered it clear what books were to be kept in the New Jersey registered office, and put the duty of complying with the statute upon the directors.

In the same case it was held that the provision of the statute requiring a full, true and complete list, &c., to be made out ten days before the election, was directory merely, and that a failure to comply with it could not render the election invalid. "The design of the first section was to "afford to every corporator a knowledge of his co-corporators, and an "opportunity of corresponding with them on the affairs of the institution, "of the necessity of expediency of a change in its direction, and thereby "rescuing the election from the immediate control of the board or of "officers whose misconduct or incapacity may have rendered a change "necessary. (Id., p. 72.) * * * The list of stockholders does not "operate as a registry of voters. The right of the stockholder to vote "does not depend upon his name being contained in the list; on the contrary, the statute expressly declares that the books of the corporation "shall be the only evidence who are the stockholders entitled to vote." (Id., p. 73.) (See also *Matter of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 539.) The Court held that the evidence of right to vote under the statute comprised the stock ledger, the certificate book and the transfer book, but that the ledger is evidence only subordinate to and as supported by the other books, and that in case of dispute the transfer book must control the rest. "It is no answer to say that the transfer book had not "been much used or that it did not truly represent the actual condition "of the stock. The fact that the books have been negligently or improperly kept cannot work a repeal of the statute or relieve against its "operation." (*Downing v. Potts*, 23 N. J. Law, p. 77; *in re Election of Cape May, &c., Co.*, 51 N. J. Law, 79, 81.)

34. Directors, election of, &c.

All elections for directors shall be by ballot, unless otherwise expressly provided in the charter or certificate of incorporation;

§ 35-36 the poll at every such election shall be opened between the hours of nine o'clock in the morning and five o'clock in the afternoon, and shall close before nine o'clock in the evening; the same shall remain open at least one hour, unless all of the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this provision in writing; the persons receiving the greatest number of votes shall be the directors; *provided, however*, that in all corporations formed under the provisions of this act a majority in interest of all the stockholders shall be present in person or by proxy to constitute a quorum.

(As amended by Chap. 120, Laws of 1899; P. L. 1899, p. 262.)

P. L. 1841, p. 116; R. S. (Ed. of 1846), p. 139, § 2; Act of 1875, § 37; P. L. 1898, p. 409.

The 1899 amendment of this section limits the application of the proviso to corporations organized under this act. The statute is different from the New York act, under which it was held in a recent case that the common law rule was in force and that any number of stockholders who attend a regularly called meeting, however small their holding, can proceed to hold their election, and that a majority of those who vote can elect the board. (*Matter of Rapid Transit Ferry Co.*, 15 App. Div. 530 N. Y.)

35. No person who is a candidate for the office of director shall act as judge, inspector or clerk of any election for directors; and if any candidate shall so act and be elected, his election shall be void, and the directors shall not appoint such person a director within twelve months next succeeding; this section shall not apply to the first election of directors.

P. L. 1825, p. 82; R. S. (Ed. of 1846), p. 139, § 5; P. L. 1870, p. 27; Act of 1875, § 42.

36. Regulations as to voting.

Unless otherwise provided in the charter, certificate or by-laws of the corporation, at every election each stockholder, whether resident or non-resident, shall be entitled to one vote in person or by proxy for each share of the capital stock held by him, but no proxy shall be voted on after three years from its date; nor shall any share of stock be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election.

P. L. 1825, p. 83; P. L. 1841, p. 117; R. S. (Ed. of 1846), p. 139, § 3; Act of 1875, § 38.

At common law, unless the charter otherwise provided, a stockholder was entitled to but one vote, and that vote he was required to cast in person. Proxies were not permitted. (*Taylor v. Griswold*, 14 N. J. Law, 222.) This decision brought about the statute providing that each stockholder should be entitled to one vote for each share held by him, and authorizing the use of proxies, limiting them, however, to three years. (*Cone v. Russell*, 48 N. J. Eq., 208, 213.)

Cumulative voting.—There is no provision in the statute permitting cumulative voting. A bill (Senate No. 6) was introduced in 1898 allowing cumulative voting. The Senate Committee, however, reported a substitute bill forbidding cumulative voting (Senate Committee substitute for Senate Bills Nos. 5, 6, 31 and 32), and this bill was defeated.

It would seem that provision therefor may be made in the certificate of incorporation, or by-laws, by virtue of Section 17, which provides that "every corporation may determine by its certificate of incorporation or by-laws * * * what number of shares shall entitle the stockholders to "one or more votes," and under Section 8, subdivision VII. (See *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq., 440.)

Voting pools or trusts.—Of late years there have come to the courts several cases involving the legality of voting pools or trusts. (See article in 31 American Law Review, p. 236, "Pooling Contracts and Public Policy.") Briefly stated, the scheme is for several holders of shares to enter into an agreement to transfer their shares to a trustee, who has power to vote on them and to the extent of the shares so held by him, by the election of directors, dictate the policy and management of the company.

The trustee issues to the shareholders in exchange for their shares trust certificates, which are usually made transferable in the same manner as stock. The duties of the trustee are fixed by the trust agreement.

Two cases involving such agreements have recently come before the Court of Chancery of New Jersey, both of which were decided by Vice-Chancellor Pitney.

The first case (*Cone v. Russell*, 48 N. J. Eq., 208) was decided in 1891. There the agreement was held to be void because the objects intended to be derived from the agreement were bad as against public policy and the carrying out of which also involved a breach of trust by one of the parties. It was not held that a voting trust was in itself void as against public policy. The Vice-Chancellor said: "This conclusion [that the "contract was void as against public policy] does not reach so far "as to necessarily forbid all pooling or combining of stock, where the "object is to carry out a particular policy with the view to promote the "best interests of all the stockholders. The propriety of the objects "validates the means and must affirmatively appear." (Id., p. 215.)

In the second case (*White v. Thomas Inflatable Tire Co.*, 52 N. J. Eq., 178), decided in 1893, the agreement was declared to be invalid because it did not by its terms extend to certain shares of the company issued directly to persons who were not parties to the agreement.

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It was held to be immaterial whether they had or had not notice of the trust agreement.

"As such holders they were entitled to have the other shares of stock 'in the company stand upon an equal footing,' and they were deprived of all voice in the management of the company. The issuing of the stock was, therefore, held to be 'a waiver and abandonment by the directors 'who united in issuing it, of their rights under the contract in question.'"

In the latter case, although there is a general dictum to the effect that all such trusts are illegal, yet the Court, in its actual decision, lays stress on the fact that the "contracts in question were not made a part of "the certificate of organization or incorporated into the by-laws."

From these two cases, it would seem that voting trusts, where the object was in itself proper and lawful, provision for which was inserted in the certificate of incorporation, and formed a part of the original scheme of incorporation, on the basis of which the stock was issued, and the certificate of stock contained notice of the trust, might be upheld by the courts, under Section 8, subdivision VII, which states that the certificate of incorporation may contain "any provision creating, defining, limiting "and regulating the powers of the corporation, the directors and the "stockholders, or any class or classes of stockholders; *provided*, such "provision be not inconsistent with this act "

Qualification of stockholders.—To enable a person to vote as a stockholder, it is not necessary that he have a certificate of stock. The effect of a certificate of stock is considered at p. 37, *ante*. A subscriber for stock is a stockholder, even though he has paid nothing on his stock, and as such he is entitled to vote. It is necessary, however, that he should be a *stockholder of record on the books of the company* whether such books be the original books of subscription, if any, or books containing the original entries of such subscription. In cases of dispute the transfer book must control. (Section 40. *Downing v. Potts*, 23 N. J. Law, 66; *Storage Co. v. Assessors*, 56 N. J. Law, 389.)

The fact that a stockholder is indebted to the company on his subscription does not impair his right to vote. (*Savage v. Ball*, 17 N. J. Eq., 142; *Downing v. Potts*, 23 N. J. Law, 66.)

37. Voting powers of executors and trustees. Hypothecated stock.

Every person holding stock as executor, administrator, guardian or trustee, or in any other representative or fiduciary capacity, may represent the same at all meetings of the corporation, and may vote thereon as a stockholder, and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all such meetings, and may vote thereon as a stockholder, unless in the transfer to the pledgee on the books of the corporation he shall have expressly empowered the pledgee

to vote thereon, in which case only the pledgee or his proxy may § 38 represent said stock and vote thereon.

P. L. 1846, p. 72; P. L. 1849, p. 308; Act of 1875, §§ 39, 40.

A formal transfer of stock on the books of the company is not necessary to enable an executor, administrator, etc., to vote. The corporation books are evidence of the ownership of the stock by the testator or intestate, and this section gives to the executor or other representative *virtute officii* the right to vote thereon in his representative capacity. (*In re Election of Cape May, &c., Nav. Co.*, 51 N. J. Law, 78.)

This right is held to extend to foreign executors. "An executor taking title under a grant of letters of probate at the testator's domicile is the holder of stock belonging to his testator within the meaning of this section, and is entitled to vote thereon as such." The letters testamentary issued by the foreign court were held to be conclusive proof of the executor's title to the stock, and of his right to vote in respect thereof. (*In re Election of Cape May, &c., Nav. Co.*, 51 N. J. Law, 78.)

38. Shares of stock of a corporation belonging to said corporation shall not be voted upon directly or indirectly.

P. L. 1825, p. 82; R. S. (Ed. of 1846), p. 139, § 6; Act of 1875, § 43.

Power of corporation to purchase its own stock.—There is at common law nothing to prevent a corporation from taking its own stock in payment or satisfaction of debts, and some cases hold that at common law a corporation may purchase its own stock, provided the purchase is *bona fide* and not in fraud of creditors. (*Verplanck v. Mercantile Ins. Co.*, 1 Edw., Ch. 83; *Iowa Lumber Co. v. Foster*, 49 Iowa, 25; *Barton v. Port Jackson, &c., Co.*, 17 Barb., 397; *Cooper v. Frederick*, 9 Ala., 738; *Gillet v. Moody*, 3 N. Y., 479; *Taylor v. Miami Exporting Co.*, 6 Ohio, 176; *Ohio State Bank v. Fox*, 3 Blatch., 431; *Columbus Bank v. Bruce*, 17 N. Y., 507.)

The general rule is that a corporation may take its shares by way of gift or bequest, or in satisfaction of debts due it which cannot be collected in any other manner. "Under these circumstances, it is said, the shares do not become merged, but remain temporarily in abeyance, and may be sold again by the corporation. As a matter of fact, however, the shares are extinguished, and new shares are subsequently created in their place. By a fiction, these new shares are considered in all respects as if they were the old shares and the corporation merely an intermediary transferee; but it would be an absurdity to say that a corporation can really hold shares in itself." (Morawetz on Corporations, Section 115. See Clark on Corporations, p. 153; *State v. Smith*, 48 Vermont, 266; *Chicago, &c., Ry. Co. v. Town of Marseilles*, 54 Ill., 145.)

The rule in the United States would appear to be that in those States where there is not a positive prohibition by statute, corporations may purchase, may temporarily hold, and may sell and issue again shares of their own stock, if in good faith and without attempt to injure creditors.

(See cases cited, Amer. & English Encyclopedia of Law, Vol. VII. (2d

§ 38 Edition), p. 818; Thompson on Corporations, Section 2062, and cases cited.)

The question whether a corporation may hold its own shares does not appear to have been directly passed upon by the courts of New Jersey until 1898, when the case of *Chapman v. Ironclad Rheostat Co.* (41 Atl. Rep., 690) was decided, although in a case decided in 1833 it was assumed that a company properly owned its own stock. (*McNeely v. Woodruff*, 13 N. J. Law, 360. See also *Thompson v. Moxey*, 47 N. J. Eq., 538.) Section 30 expressly forbids corporations from dividing, withdrawing, or in any way paying to the stockholders, or any of them, any part of its capital stock, or reducing its capital stock, except according to this act, and Section 29 prescribes the manner in which the capital stock may be decreased or reduced, one of which is by the *purchase at not above par of its stock*.

The statute contains no express grant of power to a corporation to hold its own shares, but impliedly it does, and it was so held in *Chapman v. Ironclad Rheostat Co.* (41 Atl. Rep., 690). In that case it was held that under the General Corporation Act of 1896 there is an implied grant of power to corporations to purchase shares of their own capital stock whenever such purchase is required for legitimate corporate purposes. Section 29 authorizes a company to decrease its stock by "retiring shares *owned by the corporation*." Corporations are expressly given the power to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock and securities of other corporations (Section 51).

A corporation may exercise such power if contained in its charter. (*Yeaton v. Eagle Oil Co.*, 4 Wash., 183; *Iowa Lumber Co. v. Foster*, 49 Iowa, 25; *Rollins v. Shaver Wagon Co.*, 80 Iowa, 680.)

In New Jersey, there being no express prohibition, it would seem that by appropriate language in the certificate of incorporation, power may be vested in a corporation to hold, acquire and issue again its own stock, especially if it be purchased out of the surplus of the company, or be taken to secure a debt. The following clause is suggested:

"The company may use and apply its surplus property, earnings or accumulated profits, in the absolute discretion of the directors, to the creation and maintenance of a surplus fund, or to the purchase and acquisition of property real and personal, and to the purchase and acquisition of its own capital stock, and may take said capital stock in payment or satisfaction of any debt due the company from time to time, and to such extent, and in such manner and upon such terms as its board of directors shall determine, and it may reissue said stock so acquired."

The company may not vote upon such shares either directly or indirectly. (*McNeely v. Woodruff*, 13 N. J. Law, 352, 360; *Matter of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 539; see also *Hilles v. Parrish*, 14 N. J. Eq., 380.) This includes all stock standing in the name of an officer, a trustee, or in the name of any person, if the stock is the property of or belongs to the company. This pro-

hibition includes what is commonly, but often erroneously, called "Treasury Stock." § 39

A corporation has no lien on its stock held by its debtor. (*D., L. & W. R. R. Co. v. Oxford Iron Co.*, 38 N. J. Eq., 340, and cases cited.)

39. Directors shall be stockholders.

No person shall be elected a director of any corporation issuing stock unless he shall be, at the time of his election, a *bona fide* holder of some of the stock thereof; and any director ceasing to be a *bona fide* holder of some of the stock thereof, shall cease to be a director; any corporation may, by its certificate of incorporation or by-laws, determine how many shares a person shall hold to qualify him to be a director.

Act of 1875, §§ 47, 48.

Under a similar provision of the English law, it has been held that the election of a person not already holding stock is invalid, and that the subsequent acquisition of stock does not render his election valid or qualify him to act as a director.

(*Barton's Case*, 5 Ch. D., 963; *Jenner's Case*, 7 Ch. D., 132.)

It was held in an Oregon case that, "although the by-laws of a corporation provided that transfers of stock shall be made only on the corporate books, and that the transfer book shall be closed for ten days previous to the day of the annual meeting of the stockholders, a *bona fide* owner of shares of stock is eligible as a director, although the transfer of his shares to him has not been registered, and although he might, for that reason, be refused permission to vote or to receive dividends."

(3 Thompson on Corporations, Section 3860; *State v. Smith*, 15 Or., 98.)

"The question of the competency of a person for the directorship is one exclusively of judicial cognizance over which the inspectors of election have no jurisdiction. * * * Independent of the statute, a person might be a director of a corporation without being a stockholder. The statute is guardedly expressed. It prescribes as the qualification of a director, that he shall be a *bona fide* holder of stock. A stockholder may have purchased stock with a view of becoming a director, or have obtained it by gift, or he may hold it upon a trust, and be qualified to be a director. If the stock was legally issued, and is not the property of the corporation, and the legal title is in him, he is *prima facie* capable of being a director, and his right to be a director in virtue of his legal title to such stock can be impeached only by showing that title was put in him colorably with a view to qualify him to be a director for some dishonest purpose, in furtherance of some fraudulent scheme touching the organization or control of the company, or to carry into effect some fraudulent arrangement with the company." (*Matter of Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 540-1; see also *in re Leslie*, 58 N. J. Law, 609, 618.)

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The Supreme Court held that where one is made a director of a corporation solely to make up the number of directors required by law, his right to hold such office cannot be impeached for fraud at the instance of one who was a consenting party to his admission into the company and his election to the office. (*In re Leslie*, 58 N. J. Law, 609, 618.)

When a director makes an assignment of his estate for the benefit of creditors he ceases to be a director *de jure*, and the company may declare his office vacant and elect his successor, but as to the third parties dealing in good faith with the company, without notice of any infirmity in the title of the director, he must be regarded as a director *de facto*. (*Kuser v. Wright*, 52 N. J. Eq., 825, reversing *Wright v. First Natl. Bank*, 52 N. J. Eq., 392.)

A person is not a director though nominated and elected until he has accepted the office either expressly or impliedly. (*Whittaker v. Amwell Natl Bank*, 52 N. J. Eq., 400, 415.)

This section is held not to apply to the first directors of a consolidated company. (*Camden, &c., Co. v. Burlington Carpet Co.*, 33 Atl., Rep. 954.)

40. Stock books to determine who may vote.

In case the right to vote upon any share of stock shall be questioned, the inspectors of the election shall refer to the stock books of the corporation to ascertain who are the stockholders, and in case of a discrepancy between the books, the transfer book shall control and determine who are entitled to vote.

P. L. 1825, p. 83; R. S. (Ed. of 1846), p. 139, § 8; Act of 1875, § 45.

As to what are "stock books" and "transfer books" see Section 33, as amended in 1898, pp. 48-9.

Inspectors of election.—The statute does not in express language require inspectors of election; the election must be by ballot, unless the certificate of incorporation otherwise provides (Sec. 34). It is usual, however, to provide in the by-laws that at all elections of directors two judges or inspectors shall be appointed by the chairman of the meeting. The provision is generally as follows:

"Such election shall be conducted by two inspectors appointed by the presiding officer of the meeting, which inspectors shall be duly sworn, and shall in writing certify to the returns; but no person who is a candidate for the office of director shall act as inspector, judge or clerk of such election."

They are ordinarily sworn to a faithful performance of their duty, and when the polls are closed they present a written report. Except at the first election, no person who is a candidate for election as director can be an inspector, and if elected his election is void (Sec. 35). The powers of inspectors are purely ministerial. They must receive the votes, count them and certify to the result.

If the right to vote is challenged they must refer to the books and ascertain whether the person offering the vote is a registered holder of stock. The books of the company are the only evidence they may receive on this question, and where this evidence is conflicting the transfer book controls. If a share has been transferred within twenty days next preceding the election, any vote offered on it must be rejected. (*Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 539; *Downing v. Potts*, 23 N. J. Law, 66.)

Representatives, executors, guardians and the like, must be permitted to vote on the shares they represent upon producing satisfactory evidence of their representative capacity. (See Section 37; *Election of Cape May, &c., Nav. Co.*, 51 N. J. Law, 78.)

Inspectors of election cannot reject a vote offered by proxy because the written proxy was not acknowledged or proved. If the proxy is regular in form and apparently the act of the stockholder, the inspectors should receive the votes offered under it. (*Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 539.)

41. If the election for directors of any corporation shall not be held on the day designated by the act or certificate of incorporation or by-laws the directors shall cause the election to be held as soon thereafter as conveniently may be; no failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation, but any justice of the supreme court may summarily order an election to be held upon the application of any stockholder, and may punish the directors for contempt of court for failure to obey the order.

R. S. (Ed. of 1846), p. 139, § 9; P. L. 1874, p. 37; Act of 1875, § 46. (*Hoboken Building Assoc'n v. Martin*, 13 N. J. Eq., 427.)

42. Supreme court may summarily investigate complaints touching elections.

The supreme court, upon application of any person who may be aggrieved by or complain of any election, or any proceeding, act or matter in or touching the same, reasonable notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application, shall proceed forthwith, and in a summary way hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election so complained of, or order a new election, or make such order, and give such relief in the premises as right and justice may require; the court may, if the case require it, either order an issue to be made up in manner and form as it may direct, to try the rights of the respective parties to the office or franchise in question, or

§ 43 may give leave to exhibit, or direct the attorney-general to exhibit, an information in the nature of a *quo warranto* in relation thereto.

P. L. 1825, p. 83; R. S. (Ed. of 1846), p. 139, § 7; Act of 1875, § 44.

A stockholder is a person aggrieved within the meaning of the statute. (*Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 539.) The Court may set aside the election and order the admission as directors of the persons properly elected. (*In re Election of Cape May, &c., Nav. Co.*, 51 N. J. Law, 78.)

The inquiry before the Court is limited to the consideration whether or not the election complained of has been conducted according to the statutory provisions. (*In re Leslie*, 58 N. J. Law, 609.)

By a supplement to the general corporation act passed in 1899 (see p. 130, *post*) the chancellor is given jurisdiction of complaints touching elections for directors, thus changing the rule established by decision that to determine the regularity of an election, or to declare an office to which any one has been duly elected forfeited, a court of law is the proper and only competent tribunal. (*Johnson v. Jones*, 23 N. J. Eq., 216, 226; *Mechanics Nat. Bank v. Burnet Mfg. Co.*, 32 N. J. Eq., 236, 239; *Kean v. Union Water Co.*, 52 N. J. Eq., 813.)

43. Annual statement of officers and directors.

Every corporation, foreign or domestic, authorized to transact business in this state, **shall file** in the office of the secretary of state **annually**, within thirty days after every election of directors, **a statement** authenticated by the signatures of the president and secretary, containing the names of **all the directors and officers**, with the date of election or appointment, term of office, residence and post office address of each, the character of its business, the location, giving **the street and number**, if any, of **its principal office** in this state, and **the name of the agent** in charge of said office, upon whom process against the corporation may be served; and for this purpose the secretary of state shall furnish blanks in proper form and safely keep in his office all such statements, and issue to the corporations filing the same his certificate thereof, and also prepare an alphabetical index thereof, which statements and index shall be submitted to the inspection of persons interested at all proper hours; and every corporation failing to comply with the provisions of this section shall forfeit to the state two hundred dollars, to be recovered with costs in an action of debt to be prosecuted by the attorney-general, who shall prosecute such actions whenever it shall appear that this section has

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ANNUAL STATEMENT. Act of 1900. 58a

Section 43 has been amended by Chapter 124 of the Laws of 1900 to read as follows:

43. Annual report to secretary of state.

Every domestic corporation and every foreign corporation doing business within this state, shall file in the office of the secretary of state within thirty days after the first election of directors and officers and annually thereafter within thirty days after the time appointed for holding the annual election of directors a report authenticated by the signatures of the president and one other officer, or by any two directors of the company, stating:

- I. The name of the corporation;
- II. The location (town or city, street and number, if number there be) of its registered office in this state, and the name of the agent upon whom process against the corporation may be served;
- III. The character of its business;
- IV. The amount of its authorized capital stock, if any, and the amount actually issued and outstanding;
- V. The names and addresses of all the directors and officers of the company and when the term of office of each expires;
- VI. The date appointed for the next annual meeting of the stockholders for the election of directors;
- VII. Whether the name of such corporation has been at all times displayed at the entrance of its registered office in this state, and whether such corporation has kept at this registered office in this state a transfer book, in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law; *provided, however,* that the requirement of this subdivision shall not apply to foreign corporations nor to any railroad or canal corporation; *and further provided,* that no part of this section shall apply to corporations as are now by law under the supervision of the department of banking and insurance.

If such report is not so made and so filed the corporation shall forfeit to the state two hundred dollars, to be recovered with

costs in an action of debt, to be prosecuted by the attorney-general, who shall prosecute such actions whenever it shall appear that this section has been violated; *and further provided*, if such report be not so made and filed, all of the directors of any such domestic corporation who shall willfully refuse to comply with the provisions hereof and who shall be in office during the default shall at the time appointed for the next election, and for a period of one year thereafter, be thereby rendered ineligible for election or appointment to any office in the company as directors or otherwise; no director shall be thus disqualified for the failure to make and file such report if he shall file with the secretary of state, before the time appointed for holding the next election of directors after said default, a certificate stating that he has endeavored to have such report made and filed, but that the officers have neglected to make and file the same, and shall report the items required to be stated in such annual report so far as they are within his knowledge or are obtainable from sources of such information open to him, verified by him to be true to the best of his knowledge, information and belief; the secretary of state shall, upon application, furnish blanks in proper form and shall safely keep in his office all such reports, and shall prepare an alphabetical index thereof, which reports and index shall be open to the inspection of all persons at proper hours.

2. In case any domestic corporation, or any foreign corporation authorized to transact business in this state, shall fail to file such report within the time required by this section, or in case the agent of any such corporation designated by any such corporation as the agent upon whom process against the corporation may be served shall die, or shall resign, or shall remove from the state, or such agent cannot with due diligence be found, it shall be lawful, while such default continues, to serve process against any such corporation upon the secretary of state, and such service shall be as effective to all intents and purposes as if made upon the president or head officer, of such corporation, and within two days after such service upon the secretary of state as aforesaid, it shall be the duty of the secretary of state to notify such corporation thereof by letter directed to such corporation at its registered office, in which letter shall

be inclosed a copy of the process or other paper served, and it shall be the duty of the plaintiff in any action in which said process shall be issued to pay to the secretary of state, for the use of the state, the sum of three dollars, which said sum shall be taxed as a part of the taxable costs in said suit if the plaintiff prevails therein; the secretary of state shall keep a book to be called the "process book," in which shall be recorded alphabetically, by the name of the plaintiff and defendant therein, the title of all causes in which processes have been served upon him, the test of the process so served and the return day thereof, and the date and hour when such service was made.

3. The terms "principal office," "principal office in this state" and "registered office," wherever used in this act, shall be construed as synonymous terms.

4. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect May first, nineteen hundred.

Approved March 23, 1900.

The changes effected by this amendment are:

1. **The date of election or appointment of the directors and officers is not required.**

It is sufficient to state when the term of office of each expires.

2. **The amounts of authorized and issued capital must be stated.**

These amounts should be stated as of the time when the report is made.

As to when stock is issued see *Storage Co. v. Assessors*, 56 N. J. Law, 389, 393.

3. **The date appointed for the next annual meeting must be stated.**

The place of the meeting is fixed by statute (Sec. 44), viz., the registered office.

4. **The report must be filed whether the meeting was held or not.**

Before this amendment it was doubtful whether a report was required where no election had been held. If no election was held at the time appointed, the fact should be so stated in the report.

5. **The report must state whether the corporation has or has not complied with the law:** (1) by displaying a sign at its registered office (Sec. 45); (2) by keeping a transfer and stock book at the registered office (Sec. 33).

6. **A new penalty for failure to file is provided.**

In addition to the \$200 fine imposed on the corporation, the individual directors are made ineligible to election to any office in the company at the next annual meeting and for a year thereafter.

It is a matter of grave importance therefore to every corporation that the report should be filed within the time required by law, as serious complications are liable to arise from failure.

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7. It is also provided that if the report is not filed process against the company may be served, while the default continues, on the secretary of state.

Process may be served in like manner on the secretary of state where the registered agent dies, resigns, removes from the state, or cannot with due diligence be found.

8. No certificate is now required to be issued by the secretary of state on filing the report.

The general purposes of these amendments are:

(1) To make a public record of the time of the annual meeting of stockholders, in order that stockholders may not be forced to rely altogether on notices sent out by the company.

(2) To require the amount of capital issued and outstanding to be reported each year for the information of the state board of assessors, and as well of the stockholders of the company.

The provision of the corporation act (Sec. 25), providing for the making and filing of certificates of payment of capital stock apparently does not require a certificate to be made until the whole amount of capital stock, authorized by the charter or by each certificate of increase beyond that amount, has been paid. Accordingly the records in the secretary of state's office may never show the amount of capital stock paid in, as some companies provide in their charters for an authorized capital far beyond their immediate needs in order to save the necessity of filing a certificate of increase of capital should it afterwards be found that more capital was required. This amendment provides a remedy for this, uncertainty to the extent at least that the capital stock issued, although it may not have been paid in, must be reported once each year.

(3) To draw the line more sharply between the corporations who have a registered office in the state and comply with the law as to keeping such office, and the "tramp" corporations whose only relation to the state is that they have filed certificates of incorporation. The policy of the state has been to discourage such corporations and to require every New Jersey corporation to have at least one home office whose location can be ascertained by anyone desiring to know it.

A form of report complying with this amendment will be found at page 302a *post.*

been violated; this section shall not apply to any corporation which is required to file a similar statement in the office of the commissioner of banking and insurance. § 43a

P. L. 1872, p. 27; Act of 1875, § 49; P. L. 1877, p. 103; P. L. 1894, p. 194; P. L. 1895, p. 11.

This section is practically amended by the provision of Chapter 173 of the Laws of 1898 (see Section 43a, *post*). Every statement filed under this act must contain—

(a) The character of the business carried on by the company.

"The location (town or city, street and number, if number there be) of its principal office in this state, and the name of the agent therein and in charge thereof, and upon whom process against the corporation may be served." (Section 43a, *post*.)

(b) The names of all the directors and officers.

(c) The date of the election or appointment of each and their respective terms of office.

(d) Instead of the "residence and post office address of each" of the officers and directors it is now permissible to simply state "the post office address of the registered office of the company within this state," under the provision that "Whenever by any law of this state, in any such certificate, report or statement, the residence or post office address of any incorporator, stockholder, director or other officer is required to be set forth or given, it shall be and be deemed a full compliance with such provision to give as such post office address the post office address of the registered office of the company within this state." (Section 43a, *post*.)

This provision renders it unnecessary to disclose the non-residence of any stockholder or officer, and is for the purpose of protection against the tax authorities of other States, which, especially New York, were said to have caused an examination to be made of the records of the State of New Jersey in order to secure the names of stockholders residing in their respective States upon whom to serve notice of taxation both of the corporation and of the stockholders.

43a. Every certificate and report must give address of New Jersey office and name of agent.

Every certificate, report or statement now or hereafter required by any law of this state to be made to any officer or department of this state, or to be published, filed or recorded by any corporation, domestic or foreign, shall, in addition to the other matter required by law, set forth the location (town or city, street and number, if number there be) of its principal office in this state, and the name of the agent therein and in charge thereof, and upon whom process against the corporation may be served.

§ 44 No certificate, statement or report shall hereafter be received, filed or recorded by any officer or in any office of this state unless the same shall comply with the foregoing provisions.

Such office of any domestic corporation so registered shall be and be deemed the office and post office address of such domestic corporation, its officers, directors and stockholders, and whenever by the provisions of any law of this state any notice is required to be given to the corporation, its officers, stockholders or directors, such notice shall be sent by mail or otherwise as the law may require to such registered office, and such notice so given shall be and be deemed sufficient notice.

Whenever by any law of this state, in any such certificate, report or statement, the residence or post office address of any incorporator, stockholder, director or other officer is required to be set forth or given, it shall be and be deemed a full compliance with such provision to give as such post office address the post office address of the registered office of the company within this state.

(Supplement of April 20, 1898; P. L. 1898, p. 410.)

The following is the form approved by the Secretary of State:

"The location of the principal office in this State is at No.

"street, in the of County of

"The name of the agent therein and in charge thereof, upon whom
"process against this corporation may be served, is ."

44. The stockholders' meeting must be held at registered office in New Jersey, except where the charter designates another place. Corporations must maintain a New Jersey office. Directors may meet out of state.

In all cases where it is not otherwise provided by law, the meetings of the stockholders of every corporation of this state shall be held at its principal office in this state; the directors may hold their meetings, and have an office, and keep the books of the corporation (except the stock and transfer books) outside of this state, if the by-laws or certificate of corporation so provide; every corporation shall maintain a principal office in this state, and have an agent in charge thereof, wherein shall be kept the stock and transfer books for the inspection of all who are authorized to see the same, and for the transfer of stock; the court of chancery or the supreme court, or any justice thereof, may, upon proper cause shown, summarily order any or all of

the books of said corporation to be forthwith brought within this state, and kept therein at such place and for such time as may be designated in such order, and the charter of any corporation failing to comply with such order may be declared forfeited by the court making such order, and it shall thereupon cease to be a corporation, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order. § 44

P. L. 1849, p. 215; Act of 1875, § 50.

(1) **The stockholders' meeting must be held at principal office in New Jersey, except where the charter designates another place.**—Prior to February 28, 1849, there appears to have been no statutory restriction upon New Jersey corporations as to where they should hold their stockholders' meetings.

Many special charters had been granted to corporations, designating the place of meeting of the stockholders. In 1849 an act was passed providing—

“That all companies incorporated under the laws of this state, whose charters do not designate their places of meeting, shall hold their business meetings, the meetings of their directors, and shall keep their office and the books of the company, in the state of New Jersey; *provided, that this act shall not apply to any corporations whose charters are not subject, by the terms thereof, to be altered, modified or repealed*, or to any incorporated steamboat companies, or to any ferry company, on the waters between this state and either of the adjoining states.”

P. L. 1849, p. 215.

For the proviso in this act there was eventually substituted the words “in all cases where not otherwise specified by law.” Subsequent decisions construed this language to apply to corporations having a special charter which designated a place for the meetings of the stockholders, and which provision could not be changed by the Legislature because the charters were not subject to repeal. (*Hilles v. Parrish*, 14 N. J. Eq., 380, 383; *Coe v. N. J. Mid. R'y Co.*, 31 N. J. Eq., 115, 117.) These cases held that independent of this statute the rule in New Jersey was the same as that in other States, “that a private corporation whose charter has been granted by one State cannot hold meetings and pass votes in another state.”

All corporations, therefore, organized under the General Act since 1875 must hold meetings of stockholders in New Jersey and at the principal and registered office of the company.

It would seem to follow from *Hilles v. Parrish*, 14 N. J. Eq., 380, that any action taken at any stockholders' meeting held outside of New Jersey would be void.

(2) **Directors may hold meetings, have an office, keep the books of the corporation, except the stock and transfer books, outside of the State.**

This is the legislative sanction of New Jersey for the holding of directors' meetings outside of the State. Without this, proceedings taken

§ 44 at such a meeting might be judicially declared invalid. (*Hilles v. Parrish*, 14 N. J. Eq., 380; Thompson on Corporations, Vol. 6, Section 7875, et seq., discusses the rule in detail and states the principle involved.) Legislative permission to do business outside of the State of New Jersey is conditional upon the making of suitable provision in the by-laws or certificate of incorporation.

Therefore, it is usual to insert in the certificate of incorporation a clause to the effect that—

“The directors shall have power to hold their meetings, to have one “or more offices and to keep the books of the corporation (except the “stock and transfer books) outside of this state, at such places as may be “from time to time designated by them.”

(3) “Every corporation shall maintain a principal office in this state, and “have an agent in charge thereof, wherein shall be kept the stock and transfer “books for the inspection of all who are authorized to see the same, and for the “transfer of stock.”

This is the legislative prohibition against “tramp corporations.” Requiring the corporation to “maintain” a principal office is but the statutory declaration of the principle that a corporation “must dwell in “the place of its creation and cannot migrate to another sovereignty.” (*Bank of Augusta v. Earle*, 13 Pet. [U. S.], 519, 588; *Day v. Newark India Rubber Co.*, 1 Blatchf. [U. S.], 628.)

The same doctrine has been asserted by the courts of New Jersey. (*Coe v. N. J. Mid. R'y. Co.*, 31 N. J. Eq., 115, 117 [1892].)

To understand clearly the elements prescribed by the laws of New Jersey as essential to the maintenance of a corporation dwelling in New Jersey it is proper to examine two questions:

First.—What is a principal office in the State of New Jersey?

It has been decided again and again that “the statute contemplates “that such a place of business shall exist not only in name but in fact.” The office must be a real existing office and not a sham or an evasion of the statute. The express requirements of the statute are as follows:

(1) The office must be registered.

The company must state in its certificate of incorporation the location by street and number of its principal office. (Section 8, subdivision II, as amended in 1898. See p. 16, *ante*.)

This same registration of the principal office must appear in every certificate thereafter filed or published. (Section 43a, *ante*.)

Annually the officers of the corporation are required to file a formal certificate with the Secretary of State giving this information. (Section 43.)

One reason for this repeated registration of the principal office is that the State and any other parties interested may determine beyond question

that the company not only had a principal office when it filed its certificate of incorporation, but in the language of the statute it has continued to "maintain" such office.

The statutes have thrown extraordinary safeguards about the record evidence of the maintenance of a principal office within New Jersey, and the officers are made liable for a penalty of two hundred dollars if they fail in this respect (Section 43); they are held liable for the debts of the concern if they make a false report (Section 52); and all State officials are prohibited from filing any certificate lacking this information in detail.

(2) **The office must be accessible to the public.**—Besides registering the office in the departments of New Jersey, the office must be known and accessible to the public, having a sign containing the name of the corporation displayed at the entrance to the office.

A failure to do this subjects the directors to a joint and several penalty of two hundred dollars, repeated every thirty days after service of process (Section 45).

The day has gone by when incorporators may file a charter in New Jersey designating generally the city of Jersey City as its principal office, meet at a hotel and then depart with the books of the corporation to return only the next year at a hotel in a room hired for the hour in question.

(3) **The office must have an agent in charge.**—This agent should be a citizen of the State of New Jersey, of full age, or a domestic corporation authorized so to act. Trust companies are given exclusive power to act as the agent of corporations, domestic and foreign, and to register and transfer stocks, and such powers are forbidden to other corporations. (See p. 13, *ante*, P. L. 1899, p. 455.)

(a) **The agent's name must be registered.**—It is clear from an examination of the statutes of New Jersey that it is intended by the State that there shall be no evasion of this provision, but that there shall be an agent actually in charge of the office during business hours.

The name of this agent must be inserted in the certificate of incorporation (Section 43a), and his name must be reiterated in every certificate filed or published by the corporation. (Id.)

(b) **The agent must be authorized to receive process against the company.** (Section 43a.)

This is intended for the benefit of those who desire to sue domestic corporations and to put an end to the evasion of suits in New Jersey by corporations organized under its laws.

(c) **The agent must be actually in charge daily during business hours.**

There must be not only an authorized agent at the office, but he must be in charge of the office "*at all times during business hours.*"

§ 44

The agent is required, under Section 33, at all times during business hours to exhibit the stock books to any one entitled to see the same. He is required to have an annual list of the stockholders made up fresh each year and filed ten days before the annual election. This list must be open to the inspection of any stockholder at all times during business hours. (Section 33.)

(d) **The agent must also be authorized to transfer stock.**

The language of the statute is that this office of which the agent is in charge shall have in it "the stock and transfer books for the inspection of all who are authorized to see the same *and for the transfer of stock.*"

(4) **The records must be kept at this principal office.** (See Section 33 and notes thereunder.)

The corporation is required to keep at its "principal and registered office in this state the transfer books, in which the transfer of stock shall be registered and the stock books, which shall contain the name and address of the stockholders and the number of shares held by them respectively, which shall at all times during the usual hours for business be open to the examination of every stockholder." The directors are also, by the same statute, required ten days before the annual election to make up a true list of the stockholders with their names and residences and number of shares held by each, and this list also at all times during business hours is required to be kept at the registered and principal office and open to the examination of any stockholder. For a failure to do this there is a penalty of two hundred dollars to be recovered by the party injured.

It is apparent that in order to have these records open to the inspection of persons entitled to see the same as required by the statute that the "agent in charge therein" must be there during the usual business hours. The meetings of the stockholders must be held at this principal office. This office is deemed the office and post office address of the company, its officers and stockholders. (Section 43a.)

Second.—What it is to maintain a principal office.

It is, perhaps, instructive to note in what cases the courts have condemned corporations as not maintaining a principal office.

The doctrine that members of the "tramp corporations" should be held liable as partners was early adopted in New Jersey.

In 1858 the Court of Chancery held liable as partners members of a New York corporation doing business in New Jersey who failed to maintain any more than a nominal office in New York. (*Hill v. Beach*, 12 N. J. Eq., 31, 36.)

In 1873 the Supreme Court reaffirmed this doctrine in *Booth v. Wonderly* (36 N. J. Law, 250).

In 1888 New York construed the New Jersey statute, holding that a nominal office and the designation of a party who was not in charge of the office was only a sham and not a real compliance with the law, and the members were liable for the debts. (*Kruse v. Dusenbury*, 1 City Court Sup., 87.)

In the same year the Supreme Court of Massachusetts ruled that one of its citizens who went to New Hampshire to form a corporation and recited in his certificate of organization that the office was in Nashua, N. H., whereas, as a matter of fact, he only had an attorney there representing the company, was not complying with the laws of New Hampshire, that his organization was a sham and he was liable for the debts of the company so called. (*Montgomery v. Forbes*, 148 Mass., 249.)

In 1894 the courts of Minnesota emphasized the doctrine that "the statute contemplates that such a place of business shall exist not only in name, but in fact."

The statute of that State provided that "the secretary and treasurer of every corporation organized under the laws of this State shall reside and have its place of business and keep the books of the company within the State."

The Minnesota statute is practically the same as the original statute in New Jersey. (P. L. N. J., 1849, p. 306, § 28.)

The Minnesota company carried on its business of manufacturing in Wisconsin and assumed to maintain an office in Minnesota, having that office at the office of its attorney who was the only agent in charge of the company's office.

The Supreme Court brushed this aside with the statement that—

"Words need not be wasted in demonstrating that for the past three years the stockholders and officers of the corporation have been engaged in evading and violating that section of the statute under which the corporation was organized, which requires that the place of business and their books be kept in the State. This is an abuse and misuser of its corporate rights, powers and franchises which justify and demand a forfeiture thereof."

(*State ex rel. v. Park & Nelson Lumber Co.*, 1 Am. and Eng. Corp. Cases [N. S.], pp. 24, 26.)

One deduction can be safely made from these cases, and that is that the office must be real and not sham, that the agent must be an actual agent and not a nominal agent, and that any palpable evasion or avoidance of the requirements of the statutes may be criticised by the courts of other States into which New Jersey corporations go and do business.

It is also safe to assert that the courts of some States are inclined to look with jealous eye upon foreign corporations coming into their domain, especially where they are largely made up of residents of their own State. These courts are not always inclined to construe the laws of

§ 44 the State of New Jersey with the utmost liberality towards the stockholders and officers. It is wise for corporators to be on the safe side and comply strictly, fully and absolutely with every requirement of the State of New Jersey.

A failure to maintain a principal office is a violation of the statute.

The company may be dissolved by the State.

The company may be expelled from the State into which it migrates.
(*Land Grant, &c., Co. v. Coffey County*, 6 Kan., 245.)

The members of corporations have been held liable as partners, but the weight of authority is to-day against the doctrine. (1 Cook on Corporations, § 237-240.)

The decisions seem to have been based upon the principle early laid down by New Jersey, that the organization was a fraud upon the law of the State in which it was incorporated and therefore the individuals "must be treated and dealt with by the law as partners trading under the "name they have assumed."

(*Hill v. Beach*, 12 N. J. Eq., 31-36, distinguished in *Stout v. Zulick*, 48 N. J. Law, 599.)

As to the New York case (*Kruse v. Dusenbury*), while this case has not been reversed or by name overruled by the courts of New York, yet in the judgment of many this decision to the extent that it holds incorporators liable as partners is not to-day the law of New York. (*Demarest v. Flack*, 128 N. Y., 205.)

(*Lancaster v. A. I. Co.*, 140 N. Y., 576, 582. 1 Cook on Corporations, p. 462.)

However one may agree or disagree with the conclusion of the court in *Kruse v. Dusenbury*, the reasoning is of interest to New Jersey corporations.

The point was raised that the company organized under the New Jersey law was doing its business in New York and maintained no principal office or place of business in New Jersey, that its pretended office was a sham and that no one was in charge thereof.

The court below held that the regularity of the corporation could not be questioned collaterally in New York. The court upon appeal reversed the judge below, and upon a second trial the defendants were held liable as partners. The language of the court upon the appeal is as follows:

"If the Grant New Process Company had no office or place of business in Plainfield, and never did business in New Jersey, these facts, in view of its charter, which designates 'Plainfield, New Jersey' as the principal place where its business was to be conducted, make it apparent that it was not an existing corporation within the meaning of the statute of New Jersey under which it purports to have been incorporated. A corporation cannot become a tramp. It must have a dom-

“icile—not in theory but in fact—within the sovereignty that created it. § 44
 “If the corporation never did business in New Jersey, and has no office
 “there, it would be difficult, if not impossible, for a creditor to obtain
 “service on the corporation in the State where it claims to have been in-
 “corporated, much less obtain from the courts of that State any process
 “which could reach assets or effects of the corporation to satisfy any
 “judgment which might be recovered. If the tax assessors of New York
 “sought to assess the company, they might hold with apparent truthfulness
 “that it was a New Jersey corporation, while the tax officers of New
 “Jersey (if the facts offered to be proved are true) could find no repre-
 “sentative or office of such company within that State. These illustra-
 “tions prove that such a scheme might operate as a fraud upon the law,
 “which courts cannot permit. A corporation, in the nature of things,
 “must have some fixed office or place of business in the State where it
 “was incorporated, so that creditors may know where to find it, that
 “they may present, and, if necessary, prosecute their just demands. The
 “statute contemplates that such place of business shall exist not only in
 “name but in fact, for if the corporation has no place of business in the
 “State where it was incorporated, it does not fit the charter, and it cannot
 “have branch offices elsewhere. Like a live tree, it cannot consist of
 “branches only, but must take root in its native soil before it can extend
 “its branches into other States. A corporation created under the laws of
 “one State cannot migrate to another and carry with it its principal
 “office, chartered privileges and immunities, so as to locate thereunder
 “and exercise its corporate functions in any State its incorporators see
 “fit to designate. (Angell & Ames on Corporations, 10th Ed., Section
 “104.) State comity cannot recognize such a claim as the one suggested.”

Massachusetts dealt with a similar question with the same result in 1888.

The Court said: “The articles of agreement were recorded in Nashau
 “and stated that the business was to be carried on there, but it was not
 “in fact carried on there and was not intended to be.

“This is not a case where there has been a defective organization of
 “a corporation which has a legal existence under a valid charter.”

The defendant was held personally liable. (*Montgomery v. Forbes*,
 148 Mass., pp. 249, 253.)

Thompson on Corporations reviews the question at length, citing cases, and says:

“The conclusion is that the ‘tramp corporation’ should not be judicially
 “recognized, but that its members should be held liable upon their contracts as
 “partners and upon their torts as joint tort-feasors.” (Thompson on Cor-
 porations, Vol. 6, § 7895, p. 6273.)

Order to bring books into the State; inspection of books by stockholders.—
 At common law the stockholder of a corporation had the right to examine
 at a reasonable time the books and records of the company. (Cook on
 Stocks, &c., Section 511.) Where such right was denied to him he had an
 action for damages. He also had a remedy by *mandamus*, but, as was
 stated in the case of *Rosenfield v. Einstein* (46 N. J. Law, 479, 481), “To
 “warrant this writ against private companies or their officers or agents,
 “there must be some specific duty to the relator, expressly imposed by
 “the terms of their charters or necessarily arising from the nature of the
 “privileges or obligations which the charters create. * * * Undoubt-

§ 44 "edly at proper times and for proper purposes, shareholders are entitled "to inspect corporate books." It was held in that case, however, that where there is fair reason to believe that a party asking for an inspection of corporate books intends to make an improper use of them, and on that ground his request is denied, the court will not aid him by *mandamus*. As to the right of stockholders to require books to be brought into the State, see *Huyler v. Cragin Cattle Co.* (40 N. J. Eq., 392, 398).

The statute gives each stockholder the express right to examine the stock and transfer books at the company's principal office at all times during business hours (Section 33), and if that right is denied to him it would seem that he has a clear remedy by *mandamus*.

The authority given by this section can be exercised only in the special case of a corporation of this State unlawfully keeping its books *out* of the State. "It cannot properly be construed to confer upon this Court any "power over corporations which it did not possess before the passage of "the act, except that which is specifically given." (*Stettauer v. N. Y. & Scranton Construction Co.*, 42 N. J. Eq., 46, and see *Laurel Springs Land Co. v. Fougeray*, 50 N. J. Eq., 756.)

The facts upon which the jurisdiction of the Court of Chancery depends to grant an inspection under this section therefore, are (1) that the books are *outside* of the State; and (2) that a *proper cause* exists for ordering them to be brought into the State.

A refusal to allow a stockholder's authorized attorney to examine them was a denial of the stockholder's rights. (*Mitchell v. Rubber Reclaiming Company*, 24 Atl. Rep., 407.)

The statutory authority to order a company to bring its books into the State does not embrace, by implication, the authority to order it to bring all its papers and memoranda here also. (*Huyler v. Cragin Cattle Co.*, 42 N. J. Eq., 139, 141.)

Charter limitations upon rights of stockholders to examine books.—For the purpose of avoiding litigations by stockholders having but a small interest in the company, and more especially to prevent rival concerns from prying into the private accounts and business of the company by purchasing a few shares of stock, it is common to insert in the certificate of incorporation, as a limitation upon the powers of the stockholders (see Section 8, subdivision VII.), a clause substantially as follows:

"The directors shall from time to time determine whether and to "what extent, and at what times and places and under what "conditions and regulations, the accounts and books of the "corporation, or any of them, shall be open to the inspection "of the stockholders; and no stockholder shall have any right "of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the "directors, or by a resolution of the stockholders."

Effect of entries in books as evidence.—Directors' minutes are evidence of a contract, though written up after the meeting. They need not be in the handwriting of the secretary; if entered under his direction and approved by him they are valid. (*Wells v. Rahway White Rubber Co.*, 19 N. J. Eq., 402.)

"Entries in the books of a corporation are, as a general rule, competent evidence of the proceedings of the corporation and of the acts and votes of its officers transacted at official meetings; but such entries are not notice to third persons of the acts or resolutions entered upon its minutes. As to third persons, the books of a corporation are private books, and such persons are not chargeable with knowledge of matters there recorded any more than a third person would be chargeable with knowledge of entries made against him in the books of a private person." (*Wetherbee v. Baker*, 35 N. J. Eq., 501, 509, 510; *North River Meadow Co. v. Christ Church*, 22 N. J. Law, 424; and see *Van Hook v. Summerville Mfg. Co.*, 5 N. J. Eq., 137.)

The minute book of a corporation is competent evidence in suits between stockholders to show the acts of the corporation, but is not competent evidence of any agreement made by the stockholders as individuals. (*Black v. Shreve*, 13 N. J. Eq., 455, 466, 483.)

45. The name of every corporation shall be at all times conspicuously displayed at the entrance of its principal office in this state, and in default thereof the directors shall be jointly and severally liable to a penalty of two hundred dollars, to be recovered with costs, by the state, before any court of competent jurisdiction, by action to be prosecuted by the attorney-general; and they shall jointly and severally be liable to a like penalty for every thirty days' additional default from and after the service of process in the first action, to be recovered in like manner.

[New in 1896.]

46. Whenever, for any reason, a legal meeting of the stockholders of any corporation cannot be otherwise called, three or more stockholders having voting powers may call such meeting by publishing ten days' notice of the time, place and purposes of the meeting in a newspaper published in the county in which its principal office in this state is located, and mailing such notice to all stockholders whose post office address is known or can be ascertained; a meeting called as aforesaid shall be a legal meeting of the corporation, and if there be no officers present, the stockholders may elect officers for the meeting; and the secretary of

§ 47 the meeting shall record the proceedings thereof in the book of minutes of the corporation.

P. L. 1846, p. 70; P. L. 1849, p. 306; Act of 1875, § 51.

IV.—Dividends—Payment of Capital Stock.

47. The directors of every corporation created under this act shall, in January in each year, unless some specific day or days for that purpose be fixed in its charter or by-laws, and in that case then on the days so fixed, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand; *provided*, that the corporation may in its certificate of incorporation or in its by-laws give the directors power to fix the amount to be reserved as a working capital.

P. L. 1866, p. 1034; P. L. 1891, p. 176; Act of 1875, § 52.

The Act of 1875 and the supplement of 1891 (P. L. 1891, p. 176) applied only to "manufacturing corporations within this State." This section applies to all corporations under this act, and is not limited to manufacturing corporations.

It was formerly held (*Park v. Grant Locomotive Works*, 40 N. J. Eq., 114, 120) that where the powers of the directors were not restrained by the charter or by contract, their power over the gains of the business was absolute so long as they acted in the exercise of an honest judgment. They could reserve whatever amount their judgment approved as necessary or judicious for repairs and improvements and to meet contingencies, both present and prospective. And their determination in respect to these matters, if made in good faith and for honest ends, though the result may show that it was injudicious, was final and not subject to judicial revision.

Under this section a duty is imposed upon directors to declare dividends annually in January out of the accumulated profits, after reserving such amount for working capital as the *stockholders* may have fixed, unless the power to fix the amount of working capital has been delegated to the directors.

The clause often inserted in the certificate of incorporation is:

"The board of directors shall have power without the assent or vote of the stockholders to make, alter, amend and rescind the by-laws of this corporation, to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens upon the real and personal property of this corporation."

Suit to enforce the declaration of a dividend must be in equity. "Generally suits to compel the declaration of dividends must be in the

"name of the corporation, but where the corporation is a defendant and the majority of directors are parties charged with fraud in this very respect the suit will proceed to a decree upon the complainant's rights." **§ 48-49**
(Laurel Springs Land Co. v Fougerey, 50 N. J. Eq., 756, 760.)

When a dividend is declared it becomes a debt due from the corporation to the individual stockholder, and after demand of payment, an action at law may be maintained for its recovery. *(King v. Paterson & Hudson R. R. Co., 29 N. J. Law, 504.)*

48. Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this act, except as hereinafter provided in case of the purchase of property, and no loan of money shall be made to a stockholder or officer thereof; and if any such loan be made the officers who make it, or assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation until the repayment of the sum so loaned.

P. L. 1846, p. 69; P. L. 1849, p. 306; Act of 1875, § 54.

An agreement on the part of a corporation that a subscriber for stock shall be secured as to part of his investment by mortgage on the corporation's property is void as to creditors of the corporation. *(Boney v. Williams, 55 N. J. Eq., 691.)*

49. Stock issued for property purchased.

Any corporation formed under this act may purchase mines, manufactories or other property necessary for its business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

Act 1875, § 55; P. L. 1889, p. 412; P. L. 1893, § 444.

"In the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive" was inserted in the statute by the Revision of 1896.

In the extent to which these words protect holders of stock issued for property purchased, the statute law of New Jersey is different from that of other States.

§ 49 In making the judgment of the directors as to the value of the property purchased conclusive the question of the value of the property for which the stock was issued is removed as an element of danger to the stockholders, except so far as gross over-valuation is evidence of actual fraud in the transaction.

The precise meaning of the words above quoted has not yet been passed upon by the courts.

It is safe to say that the statute protects the stockholder from many of the attacks which may be made upon him under the statutes of other States, notably that of the State of Maine, where a judgment creditor of the corporation recovered in an action at law against a stockholder upon the theory that his subscription was unpaid, the finding of fact being that the property was not of the value for which the stock was issued. (*Libby v. Tobey*, 19 Atl. Rep., 904.)

Commenting upon this decision Mr. Cook says: "Maine formerly "was a resort for incorporations, but a recent decision of its highest "court, holding stockholders liable on stock which has been issued for "property where the court thought the property was not worth the par "value of the stock, makes Maine too dangerous a State to incorporate "in, especially where millions of dollars of stock are to be issued for "mines, patents and other choice assortments of property. (Cook on Corporations, Section 945.)

It may be safely asserted that holders of stock in New Jersey corporations issued for property purchased cannot be held liable on any such grounds.

An individual creditor cannot bring an action in his own behalf at law against a stockholder upon the ground that the property for which the stock was issued was not of the value of the stock. All such suits must be by a general creditors' bill. (*Wetherbee v. Baker*, 35 N. J. Eq., 507.)

The earlier cases held that the contract of the subscribers could only be fulfilled by payment in money. In later cases this doctrine has been relaxed, and stock issued and paid up in work and labor, or in the purchase of property the corporation is authorized to hold, has been held to have been legally issued. (*Wetherbee v. Baker*, 35 N. J. Eq., 501, 512.)

The rule was clearly stated by the Court of Errors and Appeals, as follows:

"The inquiry, therefore, in the court below, should have been, "whether the agreement in question was fraudulent or not; for, if the "transaction was an honest one, the difference in value between the "property constituting the consideration of the sale and the stock had no "legal significance. The charter of this company authorizes the corporation to exchange its capital stock for property, and, under that condition of things, a court of equity cannot set aside a transaction of that "kind simply on the ground that the bargain, on the side of the corporation is a disadvantageous one. In such affairs the company and the "purchaser stand on the common footing of buyer and seller, the valuations of property in making the exchange, either on the one side or "the other, cannot be supervised or controlled by the Court of Chancery, "for, in the absence of deceit, or some other corrupt constituent, the

"bargain between the parties cannot be disturbed." (*Bickley v. Schlag*, 46 N. J. Eq., 533.) § 49

Where shares were issued for property at a very excessive valuation, the transaction was held to be dishonest, and it was held that the shares were not fully paid. (*Hebberd v. Southwestern Cattle Co.*, 55 N. J. Eq., 18.) This was prior to the Revision of 1896.

"To justify a corporation in issuing stock under our act for property purchased, there should be an approximation at least in true value of the thing purchased to the amount of the stock which it is supposed it represents." (*Edgerton v. Electric Improvement, &c., Co.*, 50 N. J. Eq., 354. Decided in 1892.)

(See also *Rural Homestead Co. v. Wildes*, 54 N. J. Eq., 668. Also *Meredith et al. v. N. J. Zinc & Iron Co.*, 55 N. J. Eq., 211; aff'd 56 N. J. Eq., 454.)

The goodwill of a business is property, and stock may be issued for it. And one who participated in and approved the method of valuation of such goodwill cannot afterwards claim that the goodwill so bought by the corporation was overvalued. (*Washburn v. Natl. Wall Paper Co.*, 81 Fed. Rep., 17.)

Issue of corporate bonds below par.—The usury act (G. S., p. 3703) forbids the issue in New Jersey of bonds at a greater rate of interest than six per cent. per annum, and in a suit to enforce usurious bonds only the principal can be recovered. Bonds of canal and railroad corporations are excepted from the provisions of the statute. A practical way of avoiding the usury act is indicated by the decisions in *Franklin Trust Co. v. Rutherford, B. S. & C. Electric Co.*, 41 Atl. Rep., 489, and *Lane v. Watson*, 51 N. J. Law, 186; aff'd 52 N. J. Law, 550.

Sales to company by promoters.—The power of directors to contract with the company has been considered (see pp. 26-7).

Vice-Chancellor Green reviewed the leading English cases on the subject and defined very clearly the duties and liabilities under the laws of this State of promoters on a sale of property by them to the company. (*Plaquemines Tropical Fruit Co. v. Buck*, 52 N. J. Eq., 219.)

He quotes with approval Lord Chancellor Cairns:

"I do not say that the owner of property might not promote and form a joint stock company and then sell his property to it, but I do say that if he does he is bound to take care that he sells it to the company through the medium of a board of directors, who can and do exercise an independent and intelligent judgment on the transaction, and who are not left under the belief that the property belongs, not to the promoters, but to some other persons." (*Erlanger v. New Sombrero Phosphate Co.*, 3 App. Cas., 1218, 1236; s. c. 6, English Ruling Cases, p. 777.)

In another recent case in the Court of Chancery it was held that where a promoter has a mere option to purchase lands, a one-sided contract which could not be enforced against him, and he contracts to sell those lands to his company, the transaction is presumably fraudulent, and he is liable for the profits made. (*Woodbury Heights Land Co. v. Loudenlager*, 55 N. J. Eq., 78; aff'd 56 N. J. Eq., 411.)

§ 50-51 50. **Certain corporations may take stock and bonds in other corporations in payment for labor and materials.**—Corporations having for their object the building, constructing or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers or any like works of internal improvement or public use or utility, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporations formed for the purpose of constructing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed or materials furnished to or for such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such installments or proportions as such directors may agree upon, full-paid stock in full or partial performance of the whole or any part of such subscription or purchase, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payments, and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

P. L. 1891, p. 329.

Only to the corporations designated in this section is express power given by the statute to issue stock in payment of work, labor and services, and then only to construction companies, although it would seem from the case of *Wetherbee v. Baker* (35 N. J. Eq., 501, 512), that where the contract for the rendition of services has been made in good faith and stock issued thereon, such stock would be held to be legally issued.

51. **Any corporation may hold stock and bonds of other corporations.**—Any corporation may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of said stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

P. L. 1888, p. 385; P. L. 1888, p. 445; P. L. 1891, p. 329; P. L. 1893, p. 301.

Before the statute was enacted the general rule was that a corporation had no implied power to purchase shares of the capital stock of another corporation. (See Cook on Corporations, § 315; *Elkins v. Camden & Atlantic R. R. Co.*, 36 N. J. Eq., 5.) In 1889, by an amendment to Section 55 of the Revision of 1875 (Section 49, *ante*) the directors of any company organized under that act were authorized to purchase "the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for their business," and to issue stock in payment therefor. The present section came into the law in 1893, and since that time there has been no restriction upon the power of corporations to purchase, hold and dispose of stock, bonds and securities of other corporations, domestic and foreign.

A corporation may vote shares in another corporation in which it is a stockholder by a proxy duly authorized. (*State v. Rohlfss*, 19 Atl. Rep., 1099.)

52. False certificate.—If any certificate made, or any public notice given by the officers of any corporation, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this state only.

P. L. 1846, p. 70; P. L. 1849, p. 307; Act of 1875, § 56.

The Revision of 1896 makes a knowledge of the falsity of the certificate or notice a prerequisite to a recovery under this section and provides that the liability created is a penalty enforceable in the courts of this State only. Such knowledge was not necessary under either the Act of 1846 or the Revision of 1875.

This personal liability may be enforced by any creditor, whose contract arose while such officers were stockholders or officers of the company, by an action at law, and it is not necessary to proceed by general creditors' bill, as under Section 36. (*Wetherbee v. Baker*, 35 N. J. Eq., 501.) Sections 93 and 94 apply, and no sale can be had under the execution against the officer or director, until after judgment has been obtained against the corporation and execution thereon returned unsatisfied. The case of *Quimby v. Waters* (27 N. J. Law, 296, 28 Id., 533) is a precedent for such an action.

This section relates to "officers," and does not include incorporators who signed the certificate of organization. (*Thompson-Houston Elec. Co. v. Murray*, 60 N. J. L., 20.)

§ 53-55

V.—Winding Up.

53. Corporate existence continues.—All corporations, whether they expire by their own limitation or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established.

P. L. 1846, p. 72; P. L. 1849, p. 308; Act of 1875, § 59.

In a suit by stockholders of a dissolved corporation against the directors for mismanagement of its affairs, the corporation should be made a party, by virtue of this section. Creditors should likewise be made parties. (*Camp v. Taylor*, 19 Atl. Rep., 968.)

54. Directors; trustees on dissolution.—Upon the dissolution in any manner of any corporation the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them; they shall have power to meet and act under the by-laws of the corporation, and, under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of the sale of such property, and may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of said property.

Act of 1875, § 57.

55. Powers and liabilities of such trustees.—The directors, constituted trustees as aforesaid, shall have authority to sue for and recover the aforesaid debts and property, by the name of the corporation, and shall be suable by the same name, or in their own names or individual capacities, for the debts owing by such corporation, and shall be jointly and severally responsible for such debts, to the amount of the moneys and property of the corporation which shall come to their hands or possession as such trustees.

Act. of 1875, § 58; P. L. 1892, p. 35; P. L. 1894, p. 136; P. L. 1895, p. 609.

56. Court of chancery may continue directors as trustees or appoint receivers of dissolved corporation.—When any corporation shall be dissolved in any manner whatever, the court of chancery, on application of any creditor or stockholder at any time, may either continue the directors trustees as aforesaid, or appoint one or more persons to be receivers of such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of its unfinished business; and the powers of such trustees or receivers may be continued as long as the court shall think necessary for such purposes. § 56-58

P. L. 1846, p. 73; P. L. 1849, p. 308; Act of 1875, § 60.

“The authority of the Chancellor to interpose and take from the “directors the power to close up the business of the corporation, and place “its affairs in charge of a receiver, is a discretionary power, to be exercised “only on good cause shown—upon circumstances disclosed by the proof “which show the need of the interference of the court for the protection “of creditors or stockholders from breaches of trust by the directors in “the performance of their duties.” (*Newfoundland R. R. Construction Co. v. Schack*, 40 N. J. Eq., 222, 229; *Rawnsley v. Trenton Mut. Life Ins. Co.*, 9 N. J. Eq., 95, 347.)

57. Jurisdiction of court of chancery.—The court of chancery shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees therein as justice and equity shall require.

P. L. 1846, p. 73; P. L. 1849, p. 309; Act of 1875, § 61.

58. Disposition of proceeds by trustees or receivers.—The said trustees or receivers shall pay ratably, as far as its moneys and property shall enable them, all the creditors of the corporation who prove their debts in the manner directed by the court; and if any balance remain after the payment of such debts and necessary expenses, the same shall be distributed among the stockholders.

P. L. 1846, p. 73; P. L. 1849, p. 309; Act of 1875, § 62.

§ 59-62 59. **Actions not to abate on dissolution.**—Any action, now pending or to be hereafter begun, against any corporation which may become dissolved before final judgment, shall not abate by reason thereof, but no judgment shall be entered therein except upon notice to the trustees or receivers of the corporation.

P. L. 1852, p. 140; Act of 1875, §§ 65, 92.

60. **Copy of decree of dissolution to be filed in office of secretary of state.**—A copy of every decree or judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation, and in the index thereof, and be published by him in the annual volume of laws.

VI.—Execution Against Corporation.

61. **On execution schedule of property to be furnished to officer.**—Every agent or person having charge or control of any property of a corporation, on request of any public officer, having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due to it, so far as he may have knowledge of the same.

P. L. 1846, p. 71; P. L. 1849, p. 307; Act of 1875, § 66.

62. **Execution may be satisfied by debts due the corporation.**—If any officer, holding an execution, shall be unable to find other property belonging to the corporation liable to execution, he or the judgment creditor may elect to satisfy such execution, in whole or in part, by any debts due to the corporation; and it shall be the duty of any agent or person having custody of any evidence of such debt, to deliver the same to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor shall be a valid assignment thereof; and such creditor may sue for and collect the same in the name of the corporation, subject to such equitable set-offs on the part of the debtor as in other assignments; and every agent or person who shall neglect or refuse to comply with the provisions of this and the last pre-

ceding section, shall be himself liable to pay to the execution § 63-64
creditor the amount due on said execution, with costs.

P. L. 1846, pp. 71-72; P. L. 1849, p. 308; Act of 1875, §§ 67-68.

VII.—Insolvency.

63. Directors must call meeting of stockholders when corporation becomes insolvent.—Whenever any corporation shall become insolvent, the directors, within ten days thereafter, shall call a meeting of the stockholders, and lay before them for inspection and examination all the books of accounts, by-laws and minutes of the corporation, and exhibit a full and true statement of all its estate, funds and property, and of all the debts due and owing to it, and by whom, and of all the debts owing by it, and to whom, as far as the directors can at that time make out the same; so as to exhibit to the stockholders a full, fair and true account of the situation of the affairs of the corporation.

P. L. 1829, p. 58; P. L. 1869, p. 1448; Act of 1875, § 69.

This and the following sections are in substance a re-enactment of the "Act to Prevent Frauds by Incorporated Companies." (P. L. 1829, p. 58.) Under that act it was held that the only criterion of insolvency furnished by the act was the suspension of business, and that the act of insolvency contemplated by the statute is committed at the time the company suspends its ordinary business operations. (*Bedford v. Newark Machine Co.*, 16 N. J. Eq., 117)

64. Conveyance or assignment of property, etc., after insolvency, or contemplation of insolvency, void as against creditors.—Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, neither the directors nor any officer or agent of the corporation shall sell, convey, assign or transfer any of its estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements; nor shall they or either of them make any such sale, conveyance, assignment or transfer in contemplation of insolvency, and every such sale, conveyance, assignment or transfer shall be utterly null and void as against creditors; *provided*, that a *bona fide* purchase for a valuable consideration, before the corporation shall have actually suspended its ordinary business, by any person without notice of such insolvency or of the sale being made in contemplation of insolvency, shall not be invalidated or impeached.

P. L. 1829, p. 58; P. L. 1895, p. 166.

§ 65

The object of this provision was "to prevent companies, actually insolvent, or whose embarrassments were such as must inevitably lead to "insolvency, from doing what it is lawful for an individual debtor to do "—make a preference in favor of any one or more of its creditors." (*Holcomb's Exr's v. New Hope Del. Br. Co.*, 9 N. J. Eq., 457; and see *Van Wagnen v. Savings Bank*, 10 N. J. Eq., 13; *State Bank v. Receiver*, 3 N. J. Eq., 266; *Receivers v. Paterson Gas Co.*, 23 N. J. Law at 291; *Kinsela v. Cataract Bank*, 18 N. J. Eq., 158; *Wells v. Rahway White Rubber Co.*, 19 N. J. Eq., 402; *Wilkinson v. Bauerle*, 41 N. J. Eq., 635, 641; *Frost v. Barnert*, 56 N. J. Eq., 290, 292.)

This section was enacted in 1829, was re-enacted in the Revision of 1846, continued in force to 1875, but it was not included in the Revision of that year, and the "Act to Prevent Frauds by Incorporated Companies" was repealed.

Important as this change in the law was, its effect does not seem to have been discovered, so far as the reported cases show, until eleven years afterwards, when *Wilkinson v. Bauerle*, 41 N. J. Eq., 635, was decided in the Court of Errors and Appeals in 1886.

The court then held that a corporation might sell and transfer its property and prefer one or more of its creditors to others, although it was insolvent. The only limitation upon its powers to prefer creditors being that it could not give them a preference by confessing judgment, which was prohibited by Section 80 of the Revision of 1875 (Section 86 of present act).

At the same term the Court of Errors and Appeals (*Vail v. Jameson*, 41 N. J. Eq., 648) held that the preference of one creditor of a corporation over other creditors, by means of a mortgage on corporate property, was not prohibited by law or objectionable in itself. Several other cases to the same point followed these decisions.

Montgomery v. Phillips, 53 N. J. Eq., 203, held that the board of directors of an insolvent corporation could not by a mortgage upon the corporate property prefer one of its own members, distinguishing the case from *Wilkinson v. Bauerle*. (See also *Mallory v. Kirkpatrick*, 54 N. J. Eq., 50; *Savage v. Miller*, 56 N. J. Eq., 432.) In *Vail v. Jameson*, 41 N. J. Eq., 643, the creditor was not an officer.

A corporation may make a general assignment for the benefit of creditors (P. L. 1899, p. 146).

65. Remedy in chancery by injunction and appointment of a receiver in case of insolvency.—Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the court of chancery for a writ of injunction and the appointment of a receiver or receivers or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application, and of the truth of the allegations contained in the petition

or bill, and upon such notice, if any, as the court by order may § 65 direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order.

P. L. 1829, p. 59-60; P. L. 1852, p. 397; Act of 1875, §§ 70, 71, 83; P. L. 1877, p. 74.

The power to dissolve and wind up an insolvent corporation is statutory. It formed no part of the original jurisdiction of the court. It was conferred by a statute passed in 1829, and the language by which it was conferred has remained unchanged from that time to the present. "This "statute empowers the Chancellor, on the application of a creditor or "stockholder, alleging that the corporation in which he is interested has "become insolvent, to proceed in a summary way to inquire into the truth "of such allegation, and if, upon such inquiry, it shall be made to appear "that the corporation has become insolvent, and shall not be about to "resume its business in a short time, with safety to the public and advantage to the stockholders, he may enjoin it from the further exercise of "its franchise, and also from the further transactions of business; and he "may also, at the same time, or at any subsequent time during the continuance of the injunction, if, in his judgment, the circumstances of the "case and the ends of justice require, appoint a receiver to dispose of its "assets and distribute the proceeds. The exercise of this power to its "full extent extinguishes a mere manufacturing or mercantile corporation "completely and forever. The power is a strong one. Chancellor Williamson, in *Rawnsly v. Trenton Life Ins. Co.*, 9 N. J. Eq., 95, called it "an extraordinary power—one that should be exercised with great caution, and only when the circumstances of the case and the ends of justice "required its exercise. **The statute makes insolvency the jurisdictional "fact.** The court can do nothing—neither issue an injunction nor appoint "a receiver—until insolvency is first established. That, in the language "of Governor Pennington, is the foundation of the power, and unless it "is satisfactorily made out the court has no jurisdiction * * * the "proof in support of a jurisdictional fact must always be clear and convincing, for the court derives its power from the fact, and hence, until "the fact is shown to exist, it has no power. To doubt in such a case is "to deny. If it be a balancing question, and the conduct of those who

§ 65 "have the management of the affairs of the corporation appears to have been upright and just, the court must resolve its doubt against the application and refuse to interfere—nor is it the duty of the court to use its power in all cases where insolvency is shown. Something more is required. The prerequisites prescribed by the statute are, that it shall be made to appear that the corporation has become insolvent, and, also, that it will not be able to resume its business in a short time with safety to the public and advantage to the stockholders. The power is only to be exercised when the ends of justice require its exercise. The court should strive in such cases to foster and preserve rather than to strangle or destroy.

"It is thus seen that the establishment of the fact of insolvency does not make it the duty of the court to appoint a receiver in all cases and under all circumstances, but simply places it in a position where it must exercise its best discretion, and either to appoint or refuse to appoint as the ends of justice, having due regard to the safety of the public and the best interests of creditors and stockholders, shall seem to require." (Vice-Chancellor Van Fleet in *Atlantic Trust Co. v. Consolidated Electric Storage Co.*, 49 N. J. Eq., 402, 404, 406; see also *Oakley v. Paterson Bk.*, 2 N. J. Eq., 173, 176; *Parsons v. Monroe Mfg. Co.*, 4 N. J. Eq., 187, 206; *Brundred v. Paterson Mach. Co.*, 4 N. J. Eq., 294, 305; *Goodheart v. Raritan Mfg. Co.*, 8 N. J. Eq., 73, 77; *Laurel Springs Land Co. v. Fougeray*, 50 N. J. Eq., 756; *Rawnsley v. Trenton Mut. L. Ins. Co.*, 9 N. J. Eq., 347; *Streit v. Citizens' Fire Ins. Co.*, 29 N. J. Eq., 21; *Cook v. East Trenton Pottery Co.*, 53 N. J. Eq., 29; *Nichols v. Perry Patent Arm Co.*, 11 N. J. Eq., 126.)

Sections 88 et seq. of the Chancery Act relating to bills of discovery against judgment debtors and appointment of receivers therefor do not apply to corporations. (*Mallory v. Kirkpatrick*, 50 N. J. Eq., 50.)

It is not sufficient to merely allege in the bill that the company is insolvent and has suspended its business for want of funds to carry on the same. The facts and circumstances must be set out in the bill from which the insolvency of the company shall appear. (*Newfoundland R. R. Construction Co. v. Schack*, 40 N. J. Eq., 222, 226.)

In judging of the solvency or insolvency of a company its property should be estimated at its fair value, and not at the depreciated price which it might command at a forced sale. The most unfavorable inference as to the condition of a corporation may justly be drawn from the circumstances of the company's withholding its books upon an investigation touching its insolvency. (*Parsons v. Monroe Mfg. Co.*, 4 N. J. Eq., 187.)

In *Edison v. Edison United Phonograph Co.*, 52 N. J. Eq., 620, an attempt was made to have a receiver appointed, not "because the corporation is now actually insolvent, but because of a fear, resting entirely on conjecture, that it will become so at some time in the future." Dissensions had arisen among the members of the Board of Directors as to the business policy of the company. The Court of Chancery said:

"It is too plain to require demonstration that this court has no power § 65
 "to appoint a receiver to wind up a corporation because it is feared or
 "even expected that it will become insolvent at some time in the future.
 "Nothing short of present actual insolvency will warrant the appoint-
 "ment of a receiver for such a purpose."

The proceeding against an insolvent corporation, whether domestic or foreign, authorized by Sections 65 and 66 (Sections 70 and 72 of the Act of 1875), is a proceeding *in rem*. It may be commenced by bill or petition, and a receiver may be appointed with or without notice to the corporation, as the Chancellor shall decide the exigencies of the case require. And if he orders notice to be given, he may direct that it shall be given either by service or by publication. The proceeding is summary in its character and strictly *in rem*. Its main object is to put the property of the corporation in the custody of the law, so that its proceeds may be applied in due course of administration to the payment of the debts of the corporation. (*Albert v. Clarendon Land, &c., Co.*, 53 N. J. Eq., 623.)

A corporation which has been declared insolvent has power to take steps looking toward a reorganization and a resumption of its property and business pending an injunction and receivership, and may employ agents to aid in the carrying out of such purposes, for whose compensation it will be liable if the injunction is dissolved and the receiver removed. (*Linn v. Joseph Dixon Crucible Co.* [Sup. Ct.], 59 N. J. Law, 28.)

"Putting the corporation in charge of a receiver does not work its "dissolution. The corporation continues to exist until its dissolution is "effected either by surrender or judicial decision. Meanwhile the cor- "poration exists with all its franchises, exercisable by the receiver in "the management and control of its affairs, subject to all the duties, "obligations and liabilities that rested upon the corporation itself, among "which is liability to taxation, the same as the corporation itself would "have been subject to in case the management and control of its affairs "had not been committed to a receiver." (*Kirkpatrick v. Assessors*, 59 N. J. Law, 53; *N. J. Southern R. R. Co. v. R. R. Commissioners*, 41 N. J. Law, 235.)

Receivers of foreign corporations.—To authorize the Court of Chancery to appoint a receiver of an insolvent foreign corporation, it is not necessary that the corporation should be engaged in carrying on its business in this State on the very day when the bill or petition is filed, but the court may take jurisdiction in every case where it is made to appear that the corporation has done business here, and still has property here, although at the time when the bill or petition was filed its business here is entirely suspended. (*Albert v. Clarendon Land, &c., Co.*, 53 N. J. Eq., 626.)

Powers of receiver.—In *National Trust Co. v. Miller* (33 N. J. Eq., 155, 158) it was said, in substance, that the receiver of an insolvent corporation was an officer created by law for the protection of the rights of the creditors of the corporation, and to accomplish the purposes of his creation it was indispensably necessary that he should be clothed with

§ 66-67 their attributes and equities. The receiver is the representative of the creditors, and as such may, by suit or defense, avoid any instrument which is void as against them. As such representative he may sue stockholders at law for unpaid subscriptions. (*Receiver v. Spielmann*, 50 N. J. Eq., 120, 796; *Hopper v. Lovejoy*, 47 N. J. Eq., 573; *Natl. Trust Co. v. Miller*, 33 N. J. Eq., 155, 158; *Hood v. McNaughton*, 54 N. J. Law, 425; *Barkalow v. Totten*, 53 N. J. Eq., 573; *Falk v. Whitman Cigar Co.*, 36 Atl. Rep., 1094.)

66. **Court may appoint receivers; powers of receivers.**—The court of chancery, at the time of ordering said injunction, or at any time afterwards, may appoint a receiver or receivers or trustees for the creditors and stockholders of the corporation, with full power and authority to demand, sue for, collect, receive and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his or their discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsible at law or in equity to the corporation at the time of its insolvency or suspension of business, or afterwards, upon such terms and in such manner as he or they shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity; a debtor who shall have in good faith paid his debt to the corporation without notice of its insolvency or suspension of business, shall not be liable therefor, and the receiver or receivers or trustees shall have power to sell, convey and assign all the said estate, rights and interests, and shall hold and dispose of the proceeds thereof under the directions of the court of chancery; the word receiver as used in this act shall be construed to include receivers and trustees appointed as provided in this act.

P. L. 1829, pp. 60, 61, 62; Act of 1875, §§ 72, 77.

67. **Receiver to qualify and take oath.**—Every receiver shall, before acting, enter into such bond and comply with such terms as the court may prescribe, and take and subscribe the following

oath or affirmation: "I, _____, do swear (or affirm) that I § 68-69
 "will faithfully, honestly and impartially execute the powers and
 "trusts reposed in me as receiver, for the creditors and stock-
 "holders of the _____, and that without favor or affection," which
 oath or affirmation shall be filed in the office of the clerk in
 chancery within ten days after the taking thereof.

P. L., 1829, p. 61; Act of 1875, § 73.

68. Property, franchises, etc., of insolvent corporation vest in receiver upon appointment.—All the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto.

P. L., 1829, p. 61.

This section was intended to settle the question as to whether the property of an insolvent company vests in the receiver. *Willink v. Morris Canal & Banking Co.* (4 N. J. Eq., 377) held that it did not; that the title to the property is not changed by the appointment, and that a power only is delegated to the receivers to take charge of it and sell it. *Corrigan v. Trenton Del. Falls Co.* (7 N. J. Eq., 489, 496), held that "the statute, and the appointment of receivers under it, are a conveyance or transfer of all the property of the insolvent company to the receivers for the benefit of the creditors of the company, to be distributed "in the mode pointed out by the statute." To the same effect *Freeholders of Middlesex v. State Bank* (29 N. J. Eq., 268, 274), and *Minchin v. Second Natl. Bank* (36 N. J. Eq., 436, 442). In *Receiver v. First Natl. Bank* (34 N. J. Eq., 450, 456) the contrary view is expressed by Vice-Chancellor Van Fleet, who states that the decision of Chancellor Halsted was made in ignorance of the prior decision in *Willink v. Morris Canal & Banking Co.* (4 N. J. Eq., 377). And to the same effect is *Kirkpatrick v. Corning* (37 N. J. Eq., 54, 59).

The question seems settled by this and the succeeding section.

Under this section assessment calls may properly be made by the receiver rather than by the court itself. He should give thirty days' notice as required by Section 22. (*Falk v. Whitman Cigar Co.*, 36 Atl. Rep., 1094; *Meley v. Whitaker*, 61 N. J. Law, 602; see also Thompson on Corporations, Sections 2003, 2004.)

69. When debts paid or provided for, court may direct receiver to reconvey property, or may dissolve corporation.—Whenever a receiver shall have been appointed as aforesaid and it shall afterwards appear that the debts of the corporation have been paid or provided for, and that there remains or can be obtained by further contributions sufficient capital to enable it to resume its business, the court of chancery may, in its discretion, a proper

§ 70-71 case being shown, direct the receiver to reconvey to the corporation all its property, franchises, rights and effects, and thereafter the corporation may resume control of and enjoy the same as fully as if the receiver had never been appointed; and in every case in which the court of chancery shall not direct such reconveyance, said court may, in its discretion, make a decree dissolving the corporation and declaring its charter forfeited and void.

70. **Upon reorganization company may issue bonds and stock to creditors.**—Whenever a majority in interest of the stockholders of such corporation shall have agreed upon a plan for the reorganization of the corporation and a resumption by it of the management and control of its property and business, such corporation may, with the consent of the court of chancery, upon the reconveyance to it of its property and franchises, mortgage the same for such amount as may be necessary for the purposes of such reorganization; and may issue bonds or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization.

P. L. 1882, p. 167.

(See Sections 150-6, p. 111, *post.*)

71. **Power of receiver to examine witnesses, etc.**—Such receiver shall have power to send for persons and papers and to examine any persons, including the creditors and claimants, and the president, directors and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills and choses in action, real and personal estate and effects of every kind, and also respecting its debts, obligations, contracts and liabilities, and the claims against it; and if any person shall refuse to be sworn or affirmed, or to make answers to such questions as shall be put to him, or refuse to declare the whole truth touching the subject-matter of the said examination, the court of chancery may, on report by the receiver, commit such person to prison, there to remain until he shall submit himself to be examined, and pay all the costs of the proceedings against him.

Act of 1875, § 74.

72. Power to search, etc.—Such receiver, with the assistance of a peace officer, may break open, in the daytime, the houses, shops, warehouses, doors, trunks, chests, or other places of the corporation where any of its goods, chattels, choses in action, notes, bills, moneys, books, papers or other writings or effects, have been usually kept, or shall be, and take possession of the same, and of the lands and tenements belonging to the corporation.
Act of 1875, § 75.

73. Acts of majority of receivers or trustees valid; receivers may be removed and others appointed.—Every matter and thing by this act required to be done by receivers or trustees shall be good and effectual, to all intents and purposes, if performed by a majority of them; and the court of chancery may remove any receiver or trustee and appoint another or others in his place or fill any vacancy which may occur.

P. L. 1829, p. 63; Act of 1875, § 79.

74. Inventory and report.—Such receiver, as soon as convenient, shall lay before the court of chancery a full and complete inventory of all the estate, property and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the court of his proceedings every six months thereafter during the continuance of the trust.

P. L. 1829, p. 62; Act of 1875, § 76.

75. Court may limit time to present and make proof of claims.—The court of chancery may limit the time within which creditors shall present and make proof to such receiver of their respective claims against the corporation, and may bar all creditors and claimants failing so to do within the time limited from participating in the distribution of the assets of the corporation; the court may also prescribe what notice, by publication or otherwise, shall be given to creditors of such limitation of time.

76. Claims to be upon oath.—Every claim against an insolvent corporation shall be presented to the receiver in writing and upon oath; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver shall direct, and shall produce such books and papers relating to the claim as shall be required; and the receiver shall have power to

§ 77-78 examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

P. L. 1829, p. 62

77. **Trial by jury allowed at the circuit.**—Any creditor or claimant who shall lay his claim before such receiver may, at the same time, demand that a jury shall decide thereon, and in like manner the receiver may demand that the same shall be referred to a jury; and in either case such demand shall be entered on the minutes of the receiver, and thereupon an issue shall be made up between the parties, under the direction of one of the justices of the supreme court, and a jury impanelled, as in other cases, to try the same in the circuit court of the county in which the corporation carried on its business or had its principal office; the verdict of the jury shall be subject to the control of the supreme court, as in suits originally instituted therein, and when rendered, if not set aside by the court, shall be certified by the clerk of the supreme court to the receiver; the creditor shall be considered, in all respects, as having proved his debt or claim for the amount so ascertained to be due, and in all cases in which no trial by jury shall be demanded the court of chancery shall have jurisdiction to pass upon the claims presented and to determine the rights of the claimants, and to make such order or decree touching the same as shall be equitable and just.

P. L. 1829, p. 62; Act of 1875, § 78.

78. **Persons aggrieved by proceedings may appeal to court of chancery.**—Every such insolvent corporation, or any person aggrieved by the proceedings or determination of such receiver in the discharge of his duty, may appeal to the court of chancery, which court shall, in a summary way, hear and determine the matter complained of, and make such order touching the same as shall be equitable and just.

P. L. 1829, p. 63; Act of 1875, § 82.

“The language of the seventieth section of this act [which Section 78 “of the Revision of 1896 practically restates] is very comprehensive, and “would seem to have been adopted for the purpose of embracing every “question which could possibly be brought before the receivers for their “action, and by which action any person could complain of being “aggrieved.” (*Jackson v. People's Bank*, 9 N. J. Eq., 205.)

In *Leo v. Green* (52 N. J. Eq., 1) the Chancellor held that a delay for eight years in appealing from a receiver's disallowance of a claim, where repeated notices had been given of an order limiting appeals, was a bar to any relief. § 79-81

Where there is the same receiver for two corporations, one of which, as part of its assets, owns stock in the other, a creditor of the one may appeal from an allowance of a claim against the other.

(*Blake v. Domestic Mfg. Co.*, 38 Atl. Rep., 241.)

79. Upon application receiver to be substituted as plaintiff in suits pending at time of appointment.—Such receiver shall, upon application by him, be substituted as party plaintiff or complainant in the place and stead of the corporation in any suit or proceeding at law or in equity which was pending at the time of his appointment.

P. L. 1829, p. 63; Act of 1875, § 81.

80. Actions not to abate by death of receiver.—No action against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor, or against the corporation in case no new receiver be appointed.

81. Court may order receiver to sell incumbered property in litigation free of liens.—Where property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court of chancery may order the receiver to sell the same, clear of incumbrances, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court shall direct.

P. L. 1866, p. 296; Act of 1875, § 84.

This is a supplement to a statute against frauds, is remedial in its nature, and should receive a liberal construction. The object of the Legislature was the prevention of loss by the depreciation in value of the property, pending protracted litigation. The mischief and the remedy proposed are plainly apparent upon the face of the act. It was not intended to confine the remedy to mischief arising from litigation of any particular character, but to all litigations between incumbrancers respecting the validity, extent or priority of their liens. The act must be so construed as to suppress the mischief and advance the remedy. (*Randolph v. Larned*, 27 N. J. Eq., 557, 560.)

§ 82-83 82. **Receiver of railroad, public work, etc., may sell or lease principal work, franchise, etc.**—Whenever a receiver of a corporation shall have charge of a canal, railroad, turnpike or other work of a public nature, in which the value of the work is dependent upon the franchise, and in the continuance of which the public as well as the stockholders and creditors have an interest, the receiver may sell or lease the principal work for the construction whereof the said corporation was organized, together with all the chartered rights, privileges and franchises belonging to it and appertaining to such principal work; and the purchaser or purchasers, lessee or lessees of such principal work, chartered rights, privileges and franchises, shall thereafter hold, use and enjoy the same during the whole of the residue of the term limited in the charter of said corporation, or during the term in such lease specified, in as full and ample a manner as such corporations could or might have used and enjoyed the same; subject, however, to all the restrictions, limitations and conditions contained in such charter; *provided*, that nothing in this section contained shall be so construed as to apply to or in anywise affect any corporation authorized by law to exercise banking privileges.

P. L. 1842, p. 164; P. L. 1870, p. 55; Act of 1875, § 85.

83. **Laborers and workmen to have first lien on assets.**—In case of the insolvency of any corporation the laborers and workmen, and all persons doing labor or service of whatever character, in the regular employ of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, work and services done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation.

P. L. 1849, p. 309; Act of 1875, § 63; P. L. 1887, p. 99; P. L. 1892, p. 426.

The president is not entitled to a lien for services as president; he is a member of the corporation and cannot be both employer and employee. The word laborers includes "all persons doing labor or service of whatever character for or as workmen or employees in the regular employ of "such corporation." (*England's Executors v. Beatty Organ Co.*, 41 N. J. Eq., 470.) The corresponding section of the Act of 1875 was amended in 1887. Another act was passed in 1892 which was held by the courts to supersede the prior section, although not expressly repealing it.

(*Mersereau v. Mersereau Co.*, 51 N. J. Eq., 382.) The present section is substantially the same as the Act of 1892. Under the Act of 1892 it was held that a bookkeeper, although a director, in the regular employ of a corporation, was entitled to the lien given by the statute. (*Consolidated Coal Co. v. Keystone Chemical Co.*, 54 N. J. Eq., 309.) § 84

In *Fitzgerald v. Maxim Powder Mfg. Co.* (35 Atl. Rep., 1064) the word "assets" was construed to include the entire assets or property of the corporation which came to the receiver for administration, whether incumbered by previous liens or not, with certain exceptions (which are set forth in the next section). It was held, therefore, that the lien of laborers was prior to the lien of a judgment entered before the insolvency of the company.

The right of preference is statutory and does not vest until the happening of the statutory requirements. It is created only when insolvency proceedings are begun and then arises in favor of those persons and for such amounts and under such conditions as the legislation on the subject then in force may prescribe. It was held that employees acquired no vested right by virtue of the Acts of 1875 and 1887, such acts being superseded by the Act of 1892. The law recognizes no distinction between apprentices and other employees; the rule in *Bedford v. Newark Machine Co.* (16 N. J. Eq., 121) has been changed by statute. (*Mingin v. Alva Glass Mfg. Co.*, 37 Atl., 458.)

This section being in derogation of the common right of creditors of the same class to be paid equally must be construed strictly. And the right conferred by it is held to be personal, inhering in the person alone who actually performs labor or services. (*Lehigh Coal & Nav. Co. v. C. R. R. of N. J.*, 29 N. J. Eq., 252.)

84. Such lien shall be prior to all other liens that can or may be acquired upon or against such assets, **except** the lien and incumbrance of a **chattel mortgage**, recorded more than two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, and except the lien and incumbrance of a chattel mortgage recorded within two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, for money loaned or for goods purchased within said period of two months; and also except as against the lien of mortgages given upon the lands and real estate of such insolvent corporation.

P. L. 1849, p. 309; Act of 1875, § 63; P. L. 1887, p. 99; P. L. 1892, p. 426.

This section defines and limits the only liens which are allowed to take preference over the lien of laborers.

§ 85-87 85. **Compensation of receivers.**—Before distribution of the assets of an insolvent corporation among the creditors or stockholders the court of chancery shall allow a reasonable compensation to the receiver for his services and the costs and expenses of the administration of his trust, and the costs of the proceedings in said court, to be first paid out of said assets.

86. **Distribution; how made.**—After payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionally to the amount of their respective debts, excepting mortgage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors; and the creditors shall be entitled to distribution on debts not due, making in such case a rebate of interest, when interest is not accruing on the same; and the surplus funds, if any, after payment of the creditors and the costs, expenses and allowances aforesaid, and the preferred stockholders, shall be divided and paid to the general stockholders proportionally, according to their respective shares.

P. L. 1829, p. 63; Act of 1875, § 80; P. L. 1877, p. 74.

Both mortgage and judgment creditors are preferred only so far as they have acquired liens. Under the Act of 1875 and until 1895 there was a distinction between mortgages for the purpose of preferring creditors and judgments confessed for the same purpose. The former were not prohibited, the latter were. (*Doane v. Millville Ins Co.*, 45 N. J. Eq., 274, 282; *Whittaker v. Amwell Natl. Bank*, 52 N. J. Eq., 400, 414.)

Under the Revision of 1896 no preferences whatever can be made by an insolvent corporation. (See Section 64, p. 79, *ante*.)

The franchise tax is a preferred debt in case of insolvency. (Section 205, p. 118, *post*.) With this exception New Jersey does not possess the crown's common law prerogative to have its debts paid in preference to the debts of other creditors. (*Freeholders of Middlesex Co. v. State Bank*, 29 N. J. Eq., 268; *aff'd* 30 N. J. Eq., 311; see also *Evans v. Walsh*, 41 N. J. Law, 281.)

VIII.—Service of Process.

87. **Process against corporations of this state.**—In any personal action commenced against a corporation in any of the courts of law of this state, the first process to be made use of may be a summons, a copy whereof shall be served on the president, or other head officer or agent in charge of its principal office in this state, or left at his dwelling-house or usual place of abode, at least six days before its return; and in case the president or other

head officer or agent cannot be found to be served with process, § 87a and has no dwelling-house, or usual place of abode within this state, a copy of the summons shall be served on the clerk or secretary of the corporation, if any there be, and if no clerk or secretary, then on one of its directors, or left at his dwelling-house, or usual place of abode, six days before its return.

P. L. 1865, p. 467; Act of 1875, §§ 87-88.

Sections 87 and 88 relate to the service of process in personal actions, where the fruits of the litigation are secured by a common law judgment to be executed upon the property of the defendants. They do not apply to proceedings under prerogative writs (*mandamus*, &c.), which are enforceable only by attachment for contempt in disobeying the commands of the court. (*Freeholders of Mercer v. Penna. R. R. Co.*, 41 N. J. Law, 252.) A writ of *mandamus* should be directed either to the corporation or to the select body within the corporation, whose province and duty it is to perform the particular act, or to put the necessary machinery in motion to secure its performance, and the return must be made by those to whom the writ was directed (*Id.*).

But service of such writs may be made on foreign corporations by serving on an officer or agent as prescribed by Sections 102 and 103, *post*.

Sections 87 and 88 refer to the mode of serving process in the higher courts, and not when issued by justices of the peace. Such process must be served in the manner prescribed by the Small Causes Act' (*D. L. & W. R. R. Co. v. Ditton*, 36 N. J. Law, 361; *Wheeler & Wilson Mfg. Co. v. Carty*, 53 N. J. Law, 336; Gen. Stat., p. 1865, § 18.)

Section 87 prescribes the manner in which a *summons* may be served, and has no application beyond the first process in the cause. As to subsequent process "everything must depend upon the circumstances of "each particular case, having regard to the purposes for which the corporation was created, and the nature of the duties of the person on whom "service is made, either in his official capacity, or by the usages of the "company. The principle is, that it must be made upon some person upon "whom the duty devolves by virtue of his official position, or of his employment, to communicate the fact of service to the governing power in "the corporation. A service on such a person is a service on the corporation." (*Dock v. Elizabethtown Steam Mfg. Co.*, 34 N. J. Law, 312, 318; *Facts Pub. Co. v. Felton*, 52 N. J. Law, 161. But see *Norton v. Berlin Iron Bridge Co.*, 51 N. J. Law, 442.)

87a. Service of declaration on corporation.—That the service of a copy of the declaration * * * may be made by delivering the same to the defendant personally, or by leaving it at his dwelling-house or last place of abode; and where the defendant is a corporation, service may be made by delivering

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the same to the president or other head officer, or to the secretary or clerk thereof, personally, or by leaving the same at his dwelling-house or place of abode; and the plaintiff, if he shall be entitled to costs in the cause, shall be allowed for such service the sum of two dollars for each defendant so served, not exceeding three, and the same to be included in the taxed bill of costs.

"An act to regulate the practice of courts of law. (Revision of 1874)," § 106. See Gen. Statutes, p. 2551.

88. Process against foreign corporations.—In all personal suits or actions hereafter brought in any court of this state, against any foreign corporation, process may be served upon any officer, director, agent, clerk or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode, or by leaving a copy at the office, depot or usual place of business of such foreign corporation.

Act of 1875, § 88.

In 1891 it was decided that a justice's court had no jurisdiction of a foreign corporation. (*Wheeler & Wilson Mfg. Co. v. Carty*, 53 N. J. Law, 336. The next year, however, the Legislature amended the Small Causes Act so as to confer jurisdiction upon the justice's court, providing "that any body politic or corporate of this State, or of any other State, may sue and be sued in any court for the trial of small causes, in any action or proceeding over which said court has jurisdiction."

P. L. 1892, p. 182; Gen. Stat., p. 1896.

Service of process on foreign corporation.—The person to whom a foreign corporation commits the management and control of its business here becomes the agent of the corporation for the purpose of receiving service of process in all actions arising in this State out of the conduct of the business. (*Moulin v. Insurance Co.*, 24 N. J. Law, 222, 234; s. c., 25 N. J. Law, 57, 65; *National Condensed Milk Co. v. Brandenburg*, 40 N. J. Law, 111; *Norton v. Berlin Iron Bridge Co.*, 51 N. J. Law, 442.)

The line between those who represent and those who do not represent a foreign corporation for the purposes of this act is defined in *Mulhearn v. Press Pub. Co.*, 53 N. J. Law, 150.

An officer of a foreign corporation casually within the State on business of his own, where the corporation has never transacted any business within the State, is not a proper person to serve with process against the company. (*Freeholders of Mercer v. Penna. R. R. Co.*, 42 N. J. Law, 490; *Moulin v. Ins. Co.*, 25 N. J. Law, 57, 61.)

An officer of a foreign corporation who comes into the State for the purpose of giving testimony is privileged from service of a summons in an action against the corporation while he is so in attendance as a witness, and a service made under such circumstances will be set aside. (*Mulhearn v. Press Pub. Co.*, 53 N. J. Law, 153.)

As to the service of prerogative writs against foreign corporations, see Sections 102 and 103, *post*.

§ 89-91

89. When defendant in court.—When the sheriff or other officer shall return such summons “served” or “summoned,” the defendant shall be considered as appearing in court, and may be proceeded against accordingly.

Act of 1875, § 89.

Where a sheriff in making his return added other words after the statutory indorsement “served,” such words were held to be surplusage. (*Norton v. Berlin Iron Bridge Co.*, 51 N. J. Law, 442.)

90. Proceedings when summons not served.—In case the sheriff or other officer shall return a summons issued against any corporation of this state, “not served” or “not summoned,” and an affidavit shall be made to the satisfaction of the court that process cannot be served upon it, the court shall make an order directing the defendant to cause its appearance to be entered to the action, on a day to be specified in the order, a copy of which order shall be inserted in one of the newspapers published in this state, for at least three weeks, once in each week, and a copy thereof shall also be posted in three public places in this state, as shall be ordered by the court, for at least three weeks, and if the defendant shall not appear within the time limited by the order, or within such further time as the court shall limit, then, on proof of the publication and posting of the order, the court shall order the clerk to enter appearance for the defendant, and thereupon the action shall proceed as if the defendant had entered its appearance to the action.

Act of 1875, § 90.

91. No corporation against which an order for publication shall be made, as aforesaid, shall grant, bargain, sell, alien or convey any lands, tenements or real estate in this state (in case the said summons issued out of the supreme court), or in the county in which the said summons shall have been issued (in case the said summons issued out of the circuit court or the court of common pleas), of which it shall be seized or entitled to at the time of making such order, until the plaintiff in the action shall be satisfied his legal demand, or until judgment shall be entered for the defendants; and the said action shall be and remain a lien on such lands, tenements and real estate, from the

§ 92-94 time of entering the said order for publication in the minutes or the court, and the said lands, tenements and real estate shall and may be sold on execution, as if no conveyance had been made by the said corporation.

Act of 1875, § 91.

IX.—Remedies Against Officers and Stockholders.

92. Action for liability imposed by act ; remedy in chancery.—

When the officers, directors or stockholders of any corporation shall be liable to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action against any one or more of them ; and the declaration shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally ; or the person to whom they are liable may have his remedy by bill in chancery.

P. L. 1846, pp. 70-71 ; P. L. 1849, p. 307 ; Act of 1875, §§ 93-94.

Sections 92 and 94 relate to cases where officers, directors or stockholders are made specifically liable by the provisions of the act for the payment of the debts of the company, and provide in such cases for actions by the creditor. (See Section 52, p. 75, *ante*). They do not relate to actions against stockholders to enforce payment of subscriptions for stock. Such proceedings must be by general creditors' bill for the benefit of all. (*Wetherbee v. Baker*, 35 N. J. Eq., 501, 505.)

Waters v. Quimby is an action under these sections. (27 N. J. Law, 296 ; 28 Id., 533.)

93. Stockholders, etc., who pay company's debts may recover.

—Any officer, director or stockholder who shall pay any debt of a corporation for which he is made liable by the provisions of this act, may recover the amount so paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.

P. L. 1846, p. 71 ; P. L. 1849, p. 307 ; Act of 1875, § 95.

94. Property of director, etc., not to be sold for company's debt until remedy against the company has been exhausted.—No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment be obtained therefor against such corporation and execution thereon returned

unsatisfied, but any suit brought against any director or stockholder for such debts shall stay after execution levied, or other proceedings to acquire a lien, until such return shall have been made. § 95-97

P. L., 1846, p. 71; Act of 1875, § 96.

X.—Foreign Corporations.

95. Foreign corporation may hold and convey lands, etc.—Any corporation created by any other state or by any foreign state, kingdom or government may acquire by devise or otherwise and hold, mortgage, lease and convey real estate in this state for the purpose of prosecuting its business or objects or such real estate as it may acquire by way of mortgage or otherwise, in the payment of debts due such corporation; *provided*, such foreign state, kingdom or government, under whose laws such corporation was created, shall not be at the time of such purchase at war with the United States.

P. L. 1873, p. 76; Act of 1875, § 99; P. L. 1882, p. 137; P. L. 1883, p. 220; P. L. 1887, p. 157.

96. Foreign corporations subject to this act.—Foreign corporations doing business in this state shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations.

P. L. 1873, p. 76; Act of 1875, § 103.

The question whether an aggregation of individuals is a corporation, or not, is to be determined rather by the faculties and powers conferred upon the body than by the name or description given to it. Thus a joint stock association formed under the New York statute was held to be a corporation in New Jersey, and, as such, empowered to sue and be sued, not, as is usual, however, in a corporate name, but in the name of designated officers, as prescribed by the law of its creation. (*Edgeworth v. Wood*, 58 N. J. Law, 463.)

97. Foreign corporations to file copy of charter, statement, etc., before commencing business.—Every foreign corporation, except banking, insurance, ferry and railroad corporations, before transacting any business in this state, shall file in the office of the secretary of state a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized and the amount actually issued, the character of the business which it is to transact in this state,

P. L. 1894, p. 346; P. L. 1895, p. 293.

This doctrine was reaffirmed by the Supreme Court in the case of *Horn Silver Mining Co. v. New York*, 143 U. S., 305, in which Mr. Justice Field, after quoting from the opinion of the former case, adds: "This doctrine has been so frequently declared by this court that it must be deemed no longer a matter of discussion, if any question can ever be considered at rest." He further declared: "Having the absolute power of excluding the foreign corporation the State may, of course, impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient; and it may make the grant or privilege dependent upon the payment of a specific license tax, or a sum proportioned to the amount of its capital." (See also *Liverpool Ins. Co. v. Oliver*, 10 Wall, 56; *Pembina, &c., Mining Co. v. Pennsylvania*, 125

U. S., 181; *Norfolk, &c., R. R. Co. v. Pennsylvania*, 136 U. S., 114. And see for a full discussion as to the rights and *status* of foreign corporations, 6 Thompson on Corporations, Section 7875 *et seq.*) § 98-100

98. Cannot maintain action until certificate of secretary of state is obtained.—Until such corporation so transacting business in this state shall have obtained said certificate of the secretary of state, it shall not maintain any action in this state, upon any contract made by it in this state; *provided*, that nothing herein shall prevent the enforcement of any contract made prior to the fourteenth day of March, one thousand eight hundred and ninety-five.

P. L. 1894, p. 346; P. L. 1895, p. 293.

As to whether a foreign corporation may sue on a contract made without the State, without complying with this act, see *Faxon Co. v. Lovett Co.* (36 Atl. Rep., 692).

99. On death of agent, another to be appointed; penalty for failure.—If said agent shall die, remove from the state or become disqualified, such corporation shall forthwith file in the office of the secretary of state a written appointment of another agent, attested in the manner above provided, and in case of the omission to do so within thirty days after such death, removal or disqualification, then the secretary of state, upon being satisfied that such omission has continued for thirty days, shall, by entry on the record thereof, revoke the certificate of authority to transact business within this state, and process against such corporation in actions upon any liability incurred within this state before the designation of another agent may, after such revocation, be served upon the secretary of state; at the time of such service the plaintiff shall pay to the secretary of state for the use of the state two dollars, to be included in the taxable costs of such plaintiff, and the secretary of state shall forthwith mail a copy of such process to such corporation at its general office or to the address of some officer thereof, if known to him.

100. Unlawful to transact business until authority is obtained.—Every foreign corporation transacting any business in any manner whatsoever, directly or indirectly, in this state, without having first obtained authority therefor, as hereinabove provided, shall for each offense forfeit to the state the sum of two hundred dollars, to be recovered with costs in an action prosecuted by the attorney-general in the name of the state.

P. L. 1894, p. 346; P. L. 1895, p. 293.

§ 101-3 101. **Foreign corporations to pay same taxes, etc., required of New Jersey corporations in other states.**—When, by the laws of any other state or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this state, doing business in such other state or nation, or upon their agents therein, than the laws of this state impose upon their corporations or agents doing business in this state, so long as such laws continue in force in such foreign state or nation, the same taxes, fines, penalties, licenses, fees, obligations and requirements of whatever kind shall be imposed upon all corporations of such other state or nation doing business within this state and upon their agents here; *provided*, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other states or nations transacting business in the state.

P. L. 1894, p. 346; P. L. 1894, p. 446.

This section is in retaliation for the hostile legislation of some of the other States regarding foreign corporations.

102. **Service of prerogative writ against foreign corporation.**—In any proceeding in any court of this state against a foreign corporation requiring the use of any prerogative writ, such writ may be served upon the president, vice-president, secretary or other head officer, or any director, either personally or by leaving a copy at the dwelling-house or usual place of abode of such officer or director, or upon any general agent, attorney, solicitor, superintendent or manager of such corporation.

P. L. 1881, p. 298.

103. **How writs may be enforced upon failure to make return, etc.**—In case any such corporation, after the service of any such writ, as aforesaid, shall neglect or refuse to make a proper return thereto, or shall neglect or refuse to obey the command of any such writ, when issued upon any judgment, order or decree of the supreme court, court of chancery, or any of the circuit courts of this state, and served as aforesaid, within the time prescribed by such writ, said court may enforce such writs by attachment or sequestration of the property, rights and credits of the corporation within this state.

P. L. 1881, p. 298.

See note to Section 87.

XL.—Merger of Corporations.**§ 104-5**

104. Corporations of this state may merge and consolidate.—Any two or more corporations organized or to be organized under any law or laws of this state for the purpose of carrying on any kind of business of the same or a similar nature may merge or consolidate into a single corporation, which may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger and consolidation; but the provisions of this act relative to merger and consolidation shall not apply to any railroad company, insurance company (except companies for the insurance or guaranty of the title to lands), banking company, savings bank or other corporation intended to derive profit from the loan and use of money, turnpike company or canal company.

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

105. Consolidation or merger; how made.—The consolidation or merger shall be made under the conditions, provisions, restrictions, and with the powers hereinafter mentioned:

I. The directors of the several corporations proposing to merge or consolidate may enter into a joint agreement under the corporate seals of the respective corporations, for the merger or consolidation of said corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation (if one shall be so formed or created), or of the consolidated corporation, as the case may be; the number, names and places of residence of the first directors and officers of such new or consolidated corporation (who shall hold their offices until their successors be chosen or appointed, either according to law or according to the by-laws of the said corporation); the number of shares of the capital stock, whether common or preferred, and the amount or par value of each share of such new or consolidated corporation; and the manner of converting the capital stock of each of said merging or consolidating corporations into the stock or obligations of such new or consolidated corporation, and in case of the creation of a new corporation, how and when the directors and officers shall be chosen or appointed; together with all such other provisions and details as such first-mentioned directors shall deem necessary to perfect the merger consolidation of said corporation.

§ 106

11. The agreement shall be submitted to the stockholders of each of said merging or consolidating corporations, separately, at a meeting thereof, to be called for the purpose of taking the same into consideration and twenty days' notice of the time, place and object of such meeting shall be mailed to the last known post office address of each of such stockholders; and at the said meetings of stockholders the said agreement of such directors shall be considered, and a vote of the stockholders of each corporation by ballot shall be taken separately, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy; and if the votes of the holders of two-thirds of all the capital stock of each of the said merging or consolidating corporations shall be for the adoption of said agreement, that fact shall be certified thereon by the secretary of each of the respective corporations, under the seal thereof, and the agreement, so adopted and so certified, shall be filed in the office of the secretary of state, and shall from thence be deemed and taken to be the agreement and act of merger or consolidation of the said corporations, and a copy of said agreement and act of merger or consolidation, duly certified by the secretary of state under the seal thereof, shall be evidence of the existence of such new or consolidated corporation.

P. L., 1883, p. 242; P. L., 1888, p. 441; P. L., 1893, p. 121.

106. **Corporations merged or consolidated shall be one corporation.**—Upon making and perfecting the said agreement and act of merger or consolidation, and filing the same in the office of the secretary of state, the several corporations shall be one corporation, by the name provided in said agreement (in case a new corporation shall be created thereby), or by the name of the consolidated corporation into which said other contracting corporation or corporations shall be so merged or consolidated, as the case may be, and possessing all the rights, privileges, powers and franchises, as well of a public as of private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated, except as altered by the provisions of this act.

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

107. Upon merging or consolidating, rights, etc., to be vested in new corporation.—Upon the consummation of said act of merger or consolidation, all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act; *provided*, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and the respective former corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities and duties of either of said former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

§ 107-8

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

108. Dissenting stockholder may petition court for appointment of appraisers.—If any of the corporations so authorized to merge or consolidate shall have the right to exercise any franchise, for public use, and any stockholder thereof not voting in favor of such agreement shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder or such consolidated corporation may, at any time within thirty days after the adoption and filing of the agreement of consolidation, apply by petition to the circuit court of the county in which the chief office of the corporation whose stockholders shall so dissent or neglect, was or is located, on reasonable notice to be prescribed by said court to said consolidated corporation, or to such dissenting stockholder, as the case may be, for the appointment

§ 109 of three disinterested appraisers to appraise the full market value of his stock, without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation, and whose award (or that of a majority of them) when confirmed by the said court, shall be final and conclusive on all parties, and said consolidated corporation shall pay to such stockholder the value of his stock as aforesaid; and on receiving such payment, or on a tender thereof, or in case of any legal disability or absence from the state, on the payment of such award into said court, said stockholder shall transfer his stock to the said consolidated corporation to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders; and in case the said award is not so paid within thirty days from the filing of said award and confirmation by said court, and notice thereof to be given in the manner aforesaid unto said stockholder or said consolidated corporation, the amount of the award shall be a judgment against said corporation, and may be collected as other judgments in said court are by law collectible.

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

109. **Consolidated corporation authorized to issue bonds and mortgage property.**—When two or more corporations are merged or consolidated the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such merger or consolidation; to secure the payment of which bonds or obligations it shall be lawful to mortgage its corporate franchises, rights, privileges and property, real, personal and mixed; *provided*, such bonds shall not bear a greater rate of interest than six per centum per annum; the consolidated corporation may purchase, acquire, hold and dispose of the stocks of other corporations of this state or elsewhere, and exercise in respect thereto all the powers of stockholders thereof, and may issue capital stock, either common or preferred, or both, to such an amount as may be necessary, to the stockholders of such merging or consolidating corporations in exchange or payment for their original shares, in the manner and on the terms specified in the agreement of merger or consolidation; which may fix the

amount and provide for the issue of preferred stock based on the § 110 property or stock of the merging or consolidating corporations conveyed to the consolidated corporation, as well as upon money capital paid in.

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

XII.—Taxation.

110. **Real and personal property; how taxed.**—All real and personal property of every corporation shall be taxed the same as the real and personal property of an individual; *provided*, that this action shall not apply to railway, turnpike, insurance, canal or banking corporations, or to savings banks, or to cemeteries, church property, or purely charitable or educational associations.

Act of 1875, § 105; P. L. 1878, p. 61; P. L. 1879, p. 348; P. L. 1886, p. 345.

At one time corporations were taxed on the full amount of their capital stock paid in and accumulated surplus. The Act of 1866 (P. L. 1866, p. 1078) provides "that all private corporations of this State, except banking institutions and those which, by virtue of any contract" (for an instance of such a contract see *Singer Mfg. Co. v. Heppenheimer*, 58 N. J. Law, 633) "in their charters or other contracts with this State, are expressly exempted from taxation, and except mutual life insurance companies specially taxed, shall be assessed at the full amount of their capital stock, paid in and accumulated surplus; and that the persons holding the stock shall not be assessed therefor. * * * The Act of 1866 sometimes worked injustice to corporations by subjecting them to a tax on the full amount of their capital paid in, making no allowance for impairment of capital, and the design of the Laws of 1875 and 1878 (Section 105 of the Corporation Act of 1875 and the amendment thereof, corresponding to Section 110 of the present act), was to relieve against that hardship by establishing a fairer and better method of taxation by making the property of the corporation the subject of taxation instead of the capital stock or stock and surplus. The intention was merely to substitute the one method for the other in taxing the corporation." (*Jersey City Gas Light Co. v. Jersey City*, 46 N. J. Law, 194.) The Act of 1875 by its terms applied only to corporations "hereafter" organized.

In 1878 that section was amended by striking out the word "hereafter," thereby making the section applicable to all corporations formed under special act or any general law, excepting banking and other corporations as in the present act.

In 1879 an amendment was made whereby companies organized under the Manufacturing Companies' Act and supplements thereto could avail themselves of the privilege of the Act of 1875 on complying with certain requirements, and the amendment further provided that all corporations, whether manufacturing or otherwise, organized under the Act of 1875

§ 111 and the supplements thereto, should be taxed on the capital stock at its actual value and accumulated surplus.

The effect of the decision above quoted was that so far as the Act of 1866 applied to assessing the full amount of capital paid in and accumulated surplus it was appealed by implication, but that the provision therein exempting such stock from taxation in the hands of stockholders was still in full force and effect. (*Jersey City Gas Light Co. v. Jersey City*, 46 N. J. Law, 194.)

In 1886 the Act of 1875 was amended so as to make the real and personal property of all manufacturing corporations taxable the same as the real and personal property of an individual.

Section 110 is intended to embrace Section 105 of the Act of 1875 and all the supplements thereto, and by its terms applies to "every corporation," excepting certain classes of corporations expressly enumerated. Section 105 and the Amendment of 1878 are general laws within the meaning of the amended constitution. (*State, Trenton Iron Co., v. Yard*, 42 N. J. Law, 357.)

The taxation which this section comprehends should not be confused with the franchise tax or license fee which corporations are required to pay under the Act of 1884. (See p. 114, *post.*) That is a tax or fee which the State exacts as a condition to the grant of the corporate franchise and is not a property tax. Nor on the other hand can the franchise be taxed as property by virtue of this section or the Tax Act of 1866. (*Passaic Water Co. v. Paterson*, 56 N. J. Law, 471.) Under this section and the Act of 1866, too, only such property as is actually within the State can be taxed. The franchise tax is based upon the *amount of capital stock issued and outstanding at par*, without regard to its actual value. (*Singer Mfg. Co. v. Heppenheimer*, 58 N. J. Law, 633.) The franchise tax is a state tax; that under the Act of 1866 is a local tax. (*Pipe Line Co. v. Berry*, 52 N. J. Law, 308; s. c., 53 Id., 212.)

The visible personal property of a corporation is assessed and taxed in the township or ward where such property is found (P. L., 1891, p. 192, § 6), and other personal property where its principal office is and its real estate is assessed in the township or ward where it is situated. (G. S., p. 3294, § 67.)

Where the real property of a corporation is situated partly in one township and partly in another, and is occupied by the corporation, it will be subject to taxation in the township where the principal office is. (*Warren Mfg. Co. v. Warford*, 37 N. J. Law, 397; *Warren Mfg. Co. v. Dalrymple*, 56 N. J. Law, 449, Gen. Stat., p. 3293.)

This section does not now apply to trust companies. (P. L., 1899, p. 467); non to banks (P. L., 1899, p. 448).

XIII.—Lost Certificates of Stock.

111. **New certificates of stock may be issued for certificates lost or destroyed.**—Every corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors authoriz-

ing such issue of a new certificate may, in their discretion, require § 112-3 the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as indemnity against any claim that may be made against such corporation; a new certificate may be issued without requiring any bond when, in the judgment of the directors, it is proper so to do.

P. L. 1882, p. 205; P. L. 1892, p. 166.

A certificate of stock should not be issued to take the place of a lost certificate without a resolution of the board of directors. The new certificate should state that it is issued to take the place of a lost certificate, and the company should always require the party receiving the new certificate to give it a bond to indemnify the company against any loss by reason of the issue of such new certificate.

112. Proceedings in case of refusal to issue new certificate of stock.—Whenever any corporation shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate, or his legal representatives, may apply to the circuit court of the county in which the principal office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate of stock in place of the one so lost or destroyed; such application shall be by petition, duly verified, in which shall be stated the name of the corporation, the number and date of the certificate, if known or ascertainable by the petitioner, the number of shares of stock named therein and to whom issued, and a statement of the circumstances attending such loss or destruction; thereupon said court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not be required to issue a new certificate of stock in place of the one described in the petition; a copy of the petition and order shall be served upon the president or other head officer of the corporation, or on the cashier, secretary or treasurer thereof, personally, at least ten days before the time designated in the order.

P. L. 1882, p. 205; P. L. 1892, p. 166.

113. Court may proceed in summary manner.—At the time and place specified in the order, and on proof of due service thereof, the court shall proceed in a summary manner, and in such mode as it may deem advisable, to hear the proof and alle-

§ 114 gations offered in behalf of the petitioner, or the corporation, or other interested party, relative to the subject matter of inquiry, and if upon such inquiry the court shall be satisfied that the petitioner is the lawful owner of the number of shares of the capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot, after due diligence, be found, and that no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation or other party, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares of the capital stock of the corporation, which shall be specified in the order as owned by the petitioner, and the certificate for which shall have been lost or destroyed; in making the order the court shall direct that the petitioner deposit such security, or file such bond in such form and with such security as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; and the court may also direct publication of such notice, either preceding or succeeding the making of such final order, as it shall deem proper; any person who shall thereafter claim any rights under the certificate so lost or destroyed shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order; and obedience to said order may be enforced by the court by attachment against the officers of the corporation, on proof of their refusal to comply with the same.

P. L. 1882, p. 205; P. L. 1892, p. 166.

XIV.—Fees on Filing Certificates; Sundry Provisions.

114 **Fees on filing certificates.**—On filing any certificate or other paper, relative to corporations, in the office of the secretary of state, the following fees and taxes shall be paid to the secretary of state, for the use of the state: for certificate of incorporation, twenty cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five dollars; increase of capital stock, twenty cents for each thousand dollars of the total increase authorized, but in no case less than twenty dollars; consolidation

and merger of corporations, twenty cents for each thousand § 115
dollars of capital authorized, beyond the total authorized capital
of the corporations merged or consolidated, but in no case less
than twenty dollars; extension or renewal of corporate existence
of any corporation, the same as required for the original certificate
of organization by this act; dissolution of corporation, change
of name, change of nature of business, amended certificates or
organization (other than those authorizing increase of capital
stock), decrease of capital stock, increase or decrease of par value
of or number of shares, twenty dollars; for filing list of officers
and directors, one dollar; filing copy of charter and statement of
foreign corporation and issuing certificate of authority to transact
business, ten dollars, and for all certificates not hereby pro-
vided for, five dollars; *provided*, that no fees shall be required to
be paid by any religious or charitable society or association, or
educational association having no capital stock.

Act of 1875, § 24; P. L. 1883, p. 252; P. L. 1893, p. 444.

Under this section the fee for filing a certificate of change of location
of principal office is twenty dollars. By a supplement to the corpora-
tion act another mode of changing such location is given, for which the
fee is five dollars. (See Section 28a, p. 44, *ante*.)

A certificate of incorporation was offered for filing in the secretary
of state's office stating that the total authorized capital stock was two
thousand dollars "with the privilege of increasing the same, and of the
number of shares into which it is to be divided up to fifty million dollars."
The secretary of state, acting under the advice of the attorney-general,
refused to file the certificate unless an organization fee based on a total
authorized capital stock of fifty million dollars was paid.

**115. Surviving incorporators may designate others for organ-
ization.**—When one or more of the commissioners or incorpora-
tors of any corporation, created by or under any general or
special act, shall have died before the corporation shall have been
organized, pursuant to law, the survivors or survivor may in
writing designate other persons who may take the place and act
instead of those deceased, in the organization; and the organiza-
tion so effected by their aid shall be as effectual in law as if it
had been effected by all the original commissioners or incorpo-
rators.

P. L. 1891, p. 321.

116. Mutual association may create capital stock.—The
members of any mutual association heretofore or hereafter incor-

§ 116-9 porated, may provide for and create a capital stock of such corporation, upon the consent in writing of all the members of corporation, and may provide for the payment of such stock, and fix and prescribe the rights and privileges of the stockholders therein.

P. L. 1888, p. 186.

117.—Secretary of state to compile and publish list of corporations.—The secretary of state shall annually compile from the records of his office, and publish a complete list, in alphabetical order, of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office of each in this state, the name of the agent in charge thereof, the amount of the authorized capital stock, the amount with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue.

P. L. 1889, p. 160.

118. Repealer; vested rights not impaired.—The act entitled “An Act Concerning Corporations” (Revision), approved April seventh, one thousand eight hundred and seventy-five, and all acts amendatory thereof and supplemental thereto, except so far as herein expressly re-enacted, are hereby repealed; but no existing corporation shall be thereby dissolved, nor shall the powers specified in its charter or certificate of incorporation be thereby impaired or limited, and vested rights acquired under the repealed acts and actually exercised and enjoyed shall not be divested or disturbed, but no special provision relating to taxation, or immunity or exemption therefrom, contained in any special charter, shall be revived or continued by anything in this act; all acts and parts of acts, general and special, inconsistent with this act are hereby repealed; but this repealer shall not revive any act heretofore repealed.

119. Corporations may extend corporate existence.

Any corporation, created by special charter, or under a general law, for any objects which are allowed by this act, may extend its corporate existence in the manner prescribed in the twenty-seventh section of this act; *provided*, that if such corporation possesses franchises, powers, privileges, immunities or advantages which could not be obtained under this act, such

extension shall not continue, renew or extend such franchises, powers, privileges, immunities or advantages, but the filing of the certificate of extension shall operate as a waiver and abandonment of such franchises, powers, privileges and advantages.

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(Supplement of Feb. 2, 1897, P. L., p. 11.)

Reorganization of Corporations.

150. Property and franchises of certain corporations sold by order of court, to be vested in purchasers. Purchasers to become a new corporation.

(An Act concerning the sale of the property and franchises of any corporation created by or under any law or laws of this State, except steam-railroad, canal, turnpike or plank-road companies. Approved April 16, 1897. P. L. 1897, p. 229.)

1. Whenever the property and franchises of any corporation created by or under any law or laws of this state, except steam-railroad, canal, turnpike or plank-road companies, shall be sold and conveyed under or by virtue of any decree or decrees of the court of chancery of this state or of the circuit court of the United States in and for the district of New Jersey, sitting in equity, and an execution or executions issued thereon, to satisfy any mortgage debt or debts, judgment or judgments, or other incumbrance or incumbrances thereon, such sale and conveyance, duly made and executed, shall vest in the purchaser or purchasers thereof all the right, title, interest, property, possession, claim and demand, in law and equity, of the parties to the suit or suits, action or actions, in which such decree or decrees was or were made, of, in and to the said property so sold with its appurtenances; and also of, in and to the corporate rights, liberties, privileges and franchises of the said corporation, but subject to all the conditions, limitations, restrictions and penalties of the said corporation of and concerning the same; and such purchaser or purchasers, and his or their associates, not less than three in number, shall thereupon become a new body politic and corporate in fact and in law, by such name as said persons shall select, and shall be deemed and considered the stockholders of the capital stock of such new body politic and corporate, in the ratio and according to the amount of the purchase money by them respectively contributed; and shall be entitled to all the rights, liberties, privileges and franchises, and be subject to all conditions, limitations, restrictions and penalties of and concerning the said corporation whose property and franchises shall

§ 151-4 have been so sold and conveyed, which were contained in the act or acts creating, or under which the aforesaid corporation was created, and the supplements thereto, so far as the same was or were in force and unrepealed at the time of such sale and conveyance.

151. Purchasers to meet and organize new corporation.

2. The persons for or on whose account any such property and franchises may have been purchased shall meet within thirty days after the conveyance made by virtue of said process or decree shall have been delivered, at the county, town or the county wherein said sale may have been made, written notice of the time and place of said meeting having been given to each of said several persons at least ten days before said meeting, and organize said new corporation by electing a president and board of directors to continue in office until the first Monday of May succeeding such meeting, when, and annually thereafter on the said day, a like election for a president and directors shall be held to serve for one year.

152. To adopt name and seal and fix capital stock.

3. At such meeting so held, the said person shall adopt a corporate name and corporate seal, determine the amount of the capital stock of said corporation, and shall have power and authority to make and issue certificates of stock in shares of fifty dollars each.

153. May issue preferred stock.

4. The said corporation may then, or at any time thereafter, create and issue preferred stock to such an amount and at such time as they may deem necessary.

154. May borrow money and provide for repayment.*

5. Any corporation created under this act may borrow from time to time such sum or sums of money as may be necessary for the accomplishment of the object of such corporation, not exceeding at any one time the total amount of the authorized capital stock of such corporation, or any increase thereof, and to secure the repayment thereof, or of any part or portion thereof, may issue bonds registered or with coupons or interest certificates thereto attached, or both, secured by a mortgage of any or all of its

* This does not limit the power of corporations other than reorganized corporations to issue bonds. See p. 10, *ante*.

franchises, real estate or personal property, including stocks and securities of such corporation or of any other corporation whose stocks or securities it owns, which mortgage may be recorded as mortgages of real estate are or hereafter may be by law required to be recorded in the office of the clerk or register of deeds of the county or counties in which the property of said corporation described in said mortgage may be located, and in the office of the clerk or register of deeds of the county in which the principal office of such corporation is situate, and such record or the lodgment of such mortgage in such clerk's or register's office for record shall have the same force, operation and effect as to all judgment creditors, purchasers or mortgagees in good faith, as the record or lodgment for that purpose of mortgages of real estate now have, although such mortgage may not have been executed, proved or recorded as a chattel mortgage.

155. Not to plead statute against usury.

6. No corporation or corporations issuing bonds under the provisions of this act shall plead any statute or statutes against usury in any court of law or equity in any suit instituted to enforce the payment of such bonds or mortgages.

156. Certificate to be filed in office of Secretary of State.

7. It shall be the duty of such new corporation, within one month after its organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the name of its president and directors, and transmit the said certificate to the secretary of state, at Trenton, to be filed in his office and there remain of record; and a certified copy of such certificate so filed shall be evidence of the corporate existence of said new corporation; *provided*, that nothing contained in this act shall divest or in any manner impair the lien of any prior mortgage or other incumbrance upon the property or franchises, conveyed under the sale of said property or franchise, when by the terms of the process or decree under which the sale has been made, or by operation of law, the said sale is made subject to the lien of any such prior mortgage or other incumbrance; *and provided*, that no such sale and conveyance or organization of such new corporation shall in any wise affect or impair any right or rights in law or equity of any

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person or persons, body politic or corporate, not a party or parties to the suit or suits, action or actions, in which the aforesaid decree or decrees was or were made, nor of the said party or parties, except so far forth* as determined by said decree or decrees; and *provided also*, that when any trustee or trustees shall be made a party or parties to such suit or suits, action or actions, and their *cestuis que trust*, for any reason or reasons satisfactory to the court in which suit or suits, action or actions, may be, shall not be made a party or parties thereto, the rights and interests of such *cestuis que trust* shall be concluded by such decree or decrees.

8. This act shall take effect immediately.

This applies in terms to all corporations except steam-railroad, canal, turnpike and plank-road companies. The act is not of great public value.

Since the passage of the act there has been only one reorganization pursuant to its provisions. This was by the South Jersey Traction Company. (For forms under this act see papers filed in the office of the Secretary of State by that company.)

Franchise Taxes.

200. Certain corporations to pay annual license tax.

["An act to provide for the imposition of State taxes upon certain corporations and for the collection thereof," approved April 18, 1884, Section 1, as amended by Act of March 17, 1892. P. L. 1892, p. 136.]

Every telegraph, telephone, cable or electric light company, every express company, not owned by a railroad company and otherwise taxed, every gas company, palace or parlor or sleeping car company, every oil or pipe line company, every life insurance company incorporated under the laws of this state, and every fire, marine, live stock, casualty or accident insurance company, doing business in this state, except mutual fire insurance companies, which do not issue policies on the stock plan, shall pay an annual tax, for the use of the state, by way of a license for its corporate franchise as hereinafter mentioned; *provided, however*, that no company or society shall be construed to be a life insurance company doing business in this state within the purview of this act, which, by its act or certificate of incorporation, shall have for its object the assistance of sick, needy or disabled members, the defraying funeral expenses of deceased members, and to provide for the wants of the widows and families of members after death.

* So in original.

201. Officers to make annual report to state board of assessors. § 201-3

On or before the first Tuesday of May next, and annually thereafter, it shall be the duty of the president, treasurer or other proper officer of every corporation of the character specified in the preceding section, to make report to the state board of assessors, appointed and to be appointed under the act entitled "An act for the taxation of railroad and canal property," stating specifically the following particulars, namely: each telegraph, telephone, cable and express company, not owned by a railroad company and otherwise taxed, shall state the gross amount of its receipts from business done in this state for the year preceding the first day of January prior to the making of such report; each gas company and electric light company shall state the amount of its receipts for light or power supplied within this state for the year preceding the first day of February prior to the making of such report, and the amount of dividends declared or paid during the same time; each parlor, palace or sleeping car company shall state the gross amount of its receipts for fare or tolls for transportation of passengers within this state during the same time; each oil or pipe line company engaged in the transportation of oil or crude petroleum shall state the gross amount of its receipts from the transportation of oil or petroleum through its pipes or in and by its tanks or cars in this state during the same time; each fire, marine, live stock, casualty or accident insurance company shall state the total amount of premiums received by it for insurance upon the lives of persons resident or property located within this state, during the same time.

[Section 2, as amended by Act of March 17, 1892. P. L. 1892, p. 136.]

202. Penalties for false statement, or failure to make statement.

If any officer of any company required by this act to make a return, shall, in such return, make a false statement, he shall be deemed guilty of perjury; if any such company shall neglect or refuse to make such return within the time limited as aforesaid, the state board of assessors shall ascertain and fix the amount of the annual license fee or franchise tax, and the basis upon which the same is determined, in such manner as may be deemed by them most practicable, and the amount fixed by them shall stand as such basis of taxation under this act.

[Section 3, as amended by Act of March 17, 1892. P. L. 1892, p. 137.]

203. Amount of tax to be paid by corporations.

Each telegraph, telephone, cable and express company shall

§ 203 pay to the state an annual license fee or franchise tax at the rate of two per centum upon the gross amount of its receipts so returned or ascertained; that each gas company and electric light company shall pay to the state an annual license fee or franchise tax at the rate of one-half of one per centum upon the gross amount of its receipts so returned or ascertained, and five per centum upon the dividends in excess of four per centum so paid or declared by said company; that each oil or pipe line company shall pay to the state an annual license fee or franchise tax at the rate of eight-tenths of one per centum upon the gross amount of its receipts so returned or ascertained; that each insurance company other than life shall pay to the state an annual license fee or franchise tax at the rate of one per centum upon the gross amount of its premiums so returned or ascertained; that each life insurance company incorporated under the laws of this state shall pay to the state an annual license fee or franchise tax of one per centum upon the amount of its surplus on the thirty-first day of December next preceding the time of such payment, as fixed in Section 5, and in addition thereto a further annual license fee or franchise tax of thirty-five one-hundredths of one per centum upon the total gross insurance premiums collected by such companies of this state during the year ending December thirty-first next preceding; *provided*, that any taxes, or charges in lieu of taxes, that may hereafter be collected by this state from life insurance companies of other states shall be credited in rebate of the taxes hereby imposed on companies of this state, in proportion to the several amounts payable by the several companies of this state under this act: the commissioner of banking and insurance shall ascertain and report to the state board of assessors all facts necessary to enable the said board to ascertain and fix the amount of taxation to be paid by life insurance companies under this act, and shall ascertain and report to said board the amount of rebate to be allowed to said companies as herein provided, and shall also certify to each of said companies the amount of such taxation and the rebate allowed under this act; that each parlor, palace or sleeping car company shall pay to the state an annual license fee or franchise tax at the rate of two per centum upon the gross amount of its receipts so returned or ascertained; if any oil or pipe line company has part of its transportation line in this state and part thereof in another state or states, such company shall return a statement of its gross receipts for transportation of oil or petro-

leum over its whole line, together with a statement of the whole length of its line and the length of its line in this state; such company shall pay an annual license fee or franchise tax to the state at the aforesaid rate upon such proportion of its said gross receipts as the length of its line in this state bears to the whole length of its line; **that all other corporations** incorporated under the laws of this state, and not hereinbefore provided for, **shall make annual return to the state board of assessors** of such information as may be required by said board to carry out the provisions of this act, **and shall pay an annual license fee or franchise tax of one-tenth of one per centum on all amounts of capital stock issued and outstanding up to and including the sum of three million dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one-twentieth of one per centum, and the further sum of fifty dollars per annum per one million dollars, or any part thereof, on all amounts of capital stock issued and outstanding in excess of five million dollars; provided, that this act shall not apply to railway, canal or banking corporations, or to savings banks, cemeteries or religious corporations, or to purely charitable or educational associations, or manufacturing or mining corporations, at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this state; if any manufacturing or mining company, carrying on business in this state shall have less than fifty per centum of its capital stock, issued and outstanding, invested in business carried on within this state, such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this state, but shall be entitled, in the computation of such tax, to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate so used in manufacturing or mining.**

[Section 4, as amended by the Act of March 16, 1891 (P. L., p. 150) and further amended by Act of March 17, 1892. P. L. 1892, p. 137.]

Trust companies are exempt from this tax. ("An Act concerning trust companies [Revision of 1899]," § 29, P. L., 1899, p. 467.)

Manufacturing and mining corporations, even if exempt from payment of the tax, should annually report to the state board of assessors.

204. Duties and powers of state board of assessors.

SEC. 5. The state board of assessors shall certify and report to the comptroller of the state, on or before the first Monday of

§ 205-6 June in each year, a statement of the basis of the annual license fee or franchise tax as returned by each company to, or ascertained by, the said board, and the amount of tax due thereon respectively, at the rates fixed by this act; such tax shall thereupon become due and payable, and it shall be the duty of the state treasurer to receive the same; **if the tax of any company remains unpaid on the first day of July**, after the same becomes due, the same shall thenceforth bear **interest at the rate of one per centum for each month until paid**; **the state board of assessors shall have power to require of any corporation subject to tax under this act such information or reports touching the affairs of such company as may be necessary to carry out the provisions of this act**; and may require the production of the books of such company, and may swear and examine witnesses in relation thereto; the comptroller shall receive as compensation for his services under this act and under the act entitled "An act for the taxation of railroad and canal property," approved April tenth, one thousand eight hundred and eighty-four, the sum of five hundred dollars annually.

[Section 5, as amended by Act of March 17, 1892. P. L. 1892, p. 140.]

205. **Tax is to be a debt; how collected; preferred debt in case of insolvency.**

SEC. 6. Such tax, when determined, shall be a debt due from such company to the State, for which an action at law may be maintained after the same shall have been in arrears for the period of one month; such tax shall also be a preferred debt in case of insolvency.

206. **Injunction against company in arrears for three months.**

SEC. 7 In addition to other remedies for the collection of such tax, it shall be lawful for the attorney-general, either of his own motion, or upon request of the state comptroller, whenever any tax due under this act from any company shall have remained in arrears for a period of three months after the same shall have become payable, to apply to the court of chancery, by petition in the name of the state, on five days' notice to such corporation, which notice may be served in such manner as the chancellor may direct, for an injunction to restrain such corporation from the exercise of any franchise, or the transaction of any business within this state until the payment of such tax and interest due thereon, and the costs of such application, to be fixed by the chancellor; the said court is hereby authorized to grant such injunction, if a proper case appears, and upon the granting

and service of such injunction, it shall not be lawful for such company thereafter to exercise any franchise or transact any business in this state until such injunction be dissolved. § 207

207. Act not to apply to foreign fire insurance companies.

SEC. 8. This act shall not apply to or in any manner affect the tax upon the premiums obtained in this state by foreign fire insurance companies and their agents, which tax shall be in lieu of the tax herein provided and shall be collected and distributed as is specially provided by law in relation thereto.

Application of the act.—"The scheme of this particular taxing act seems to be to impose taxes on three classes of corporations—certain specified corporations doing business in the State wherever chartered, those not doing business in this State, but holding their charters under State authority, and a class of unspecified corporations, which must be few in number, holding charters under and performing their functions in the State.

"In the former class different provisions for taxation as amongst themselves are adopted, and in the second and third classes named a franchise tax is imposed based upon the amount of their capital stock." (*Standard Underground Cable Co. v. Attorney-General*, 46 N. J. Eq., 270.)

As to the first class, both domestic and foreign corporations are included. (*Pipe Line Co. v. Berry*, 52 N. J. Law, 308; s. c., 53 N. J. Law, 212.)

Nature of the tax.—The tax imposed by this act is a license or franchise tax. It is not a tax on property and this section is not a violation of the clause of the State constitution which provides that "property shall be assessed for taxes under general rules, and by uniform rules, according to its true value." (*Standard Underground Cable Co. v. Attorney-General*, 46 N. J. Eq., 270; *Pipe Line Co. v. Berry*, 52 N. J. Law, 308; s. c., 53 N. J. Law, 212; Art. IV., § 7, Par. 12). The Act of 1866 taxing property has not been superseded by this act. Taxation under this act was designed to provide revenue for the State. Taxation under the Act of 1866 is a local tax. (*Pipe Line Co. v. Berry*, 52 N. J. Law, 308; s. c., 53 N. J. Law, 212.)

Basis of the tax.—The tax is computed upon the basis of the capital stock issued and outstanding, and it is held that stock is issued when the company has received and accepted subscriptions for the same, whether paid for or not. (*American Pig Iron, &c., Co. v. Assessors*, 56 N. J. Law, 389.)

Continuance of tax.—As long as the corporation continues it is liable for this franchise tax. It continues after a receiver is appointed and until the dissolution of the company. (*Kirkpatrick v. Assessors*, 57 N. J. Law, 53.) Where the insolvent corporation is of a public character, such as a canal, railroad or turnpike corporation whose property and work are de-

§ 207 pendent upon the franchise, and in whose continuance the public is interested, it is the duty of the receiver to take the franchise, keep it alive by the performance of corporate duties until it is ultimately sold, and consequently it is the receiver's duty to preserve the franchise and pay the franchise tax from year to year until the franchise passes from him. But in the case of a mere private corporation, after insolvency, the franchise is generally valueless, and no duty necessarily devolves on the receiver to care for it, and he will pay only that franchise tax which becomes a debt of the corporation prior to his appointment. If, however, he continues the business and uses the franchise it is his duty to pay the tax while he continues the business. And if, after the creditors of an insolvent corporation have been paid in full, there remains some money to distribute to stockholders, it seems that the receiver should pay all franchise taxes assessed after his appointment before he makes any distribution to stockholders, because it is the capital of the corporation that he then holds, which is pledged to satisfy all obligations of the corporation before it is free to be returned to the shareholders. (*Mather's Sons' Co.'s Case*, 52 N. J. Eq., 607.) The fact that the company has ceased to do business and to use its franchise, even though compelled so to do by the decree of a court enjoining the company from using certain patents which form the basis of the company's business, does not relieve it from the duty to pay the franchise tax. If it wishes to withdraw from active business, it must, to escape taxation, take proceedings to dissolve in the manner prescribed by law. In case of failure to pay such tax the act provides that proceedings may be instituted by the Attorney-General to enjoin the company from exercising its franchises until such tax is paid. (*Edison Phonograph Co. v. Assessors*, 55 N. J. Law, 55; *Electro-Pneumatic Transit Co.'s Case*, 51 N. J. Eq., 71.)

When a "proper case" is presented, the Court of Chancery has no discretion but must issue the injunction. (*Electro-Pneumatic Transit Co.'s Case*, 51 N. J. Eq., 71.)

Exemptions from payment of franchise taxes.—The statute wholly exempts from the payment of this tax manufacturing and mining corporations at least fifty per cent. of whose capital stock, issued and outstanding, is invested in mining or manufacturing **carried on within this State**. Where the amount so invested is less than fifty per cent. a deduction is allowed of the assessed value of the company's property used in manufacturing or mining. A manufacturing corporation cannot claim the exemption until it has actually located its factory within the State and begun work under its charter, and it can claim exemption only while it is actually engaged in the business of manufacturing within the State. (*Norton Construction Co. v. Assessors*, 53 N. J. Law, 564.) To determine whether the company is within the exception reference must be had to its actual business, for the business in which the capital of a company is invested, and not the objects for which the company was formed, as expressed in the certificate of incorporation, must be regarded. (*Edison Phonograph Co. v. Assessors*, 55 N. J. Law, 55.) It is not necessary that the manufacturing should be carried on directly by the company. It may, it seems, contract

with manufacturing agencies to manufacture for it, and if the manufacturing is actually carried on within the State the conditions of the statute are met. Thus, in the case of *Phonograph Co. v. Assessors*, 54 N. J. Law, 430, it was held that a corporation of this State which, by contract with another corporation located in New Jersey, gives to it the exclusive right to make phonographs, and takes all made, at the cost of materials and labor, with a percentage for profits and depreciation, and which has also an office and a factory where parts of the phonographs are made within the State, is a "manufacturing corporation carrying on business "in this State," and exempt from State taxes under this act. The court held that the relation of principal and agent subsisted and not that of buyer and seller.

Where the capital stock of a manufacturing company is invested in patents under which it manufactures, it is entitled to exemption for its capital invested in such patents as are necessary to carry on its manufacturing within the State of New Jersey. It must, however, actually manufacture within the State under the patents. Thus in the case of *Phonograph Co. v. Assessors* above cited, the total capital issued was \$6,600,000—about \$6,000 was invested in a small factory. About \$40,000 of the capital was actually expended in organizing the company. The remainder of the capital represented the estimated value of patents. It appeared that all the goods manufactured and sold were prepared in New Jersey. The tax, amounting to about \$6,500 a year, was accordingly set aside. In the case of *Edison United Phonograph Co. v. Assessors*, 57 N. J. Law, 520, the total capital was \$1,000,000, of which \$999,000 was issued for patent rights. The proof was that those rights included the right to manufacture speaking machines in New Jersey, Great Britain, France and some other foreign countries, and to sell and use such machines only in foreign lands beyond the limits of the United States and Canada. The company had no factory of its own in New Jersey, although it did manufacture through another company located in New Jersey. But there was no proof as to the amount of capital which was invested in the right to manufacture within New Jersey, and the court said that so far as the capital was used in acquiring the right to manufacture elsewhere, it was not invested in manufacturing within this State. On the facts presented the court refused to infer that fifty per cent. was invested in the right to manufacture in New Jersey, and as no deduction was asked for on account of the capital actually invested in manufacturing within the State, the taxes were affirmed with costs. The court said: "In view of "the fact that all the instruments made in New Jersey must be transported "great distances to foreign lands, before they can be used or sold, it would "seem that the right to manufacture them here must be of slight value "compared with the value of the right to manufacture them in or near to "the countries where the market must be found."

From the above cases it would seem, therefore, that in order to claim the exemption given by the statute, a manufacturing corporation must show:

§ 208-9 (1) That it has actually located its factory within the State of New Jersey and is engaged in the business of manufacturing under its charter therein.

(2) That at least 50 per cent. of its capital stock is invested in such manufacturing business carried on within the State.

(3) If capital stock has been issued for patents or patent rights, that such patents or patent rights are necessary for the manufacture in New Jersey.

What is manufacturing within the meaning of the act?—As pointed out above, it is what the company actually does, and not what it is authorized by its charter to do, that determines whether a company is engaged in manufacturing carried on in this State. In construing the statute the court will give the word "manufacturing" its popular sense. Therefore, it was held that printing and publishing a newspaper is not manufacturing, but that where a company is incorporated "to conduct and prosecute the business of book printing and job printing, engraving, electrotyping and lithographing," and its capital is invested in the prosecution of that business, and it manufactures on orders only, it is a manufacturing company within the meaning of the statute.

Evening Journal Association v. State Board of Assessors, 47 N. J. Law, 36; *Printing Co. v. Assessors*, 51 N. J. Law, 75; see also *Newark Brass Works v. Assessors*, decided by Supreme Court, June Term, 1899.

208. For failure for two years to pay state tax charter void, unless governor gives further time.

SECTION 1. If any corporation heretofore or hereafter created shall for two consecutive years neglect or refuse to pay the State any tax which has been or shall be assessed against it under any law of this state and made payable into the state treasury, the charter of such corporation shall be void, and all powers conferred by law upon such corporation are hereby declared inoperative and void, unless the governor shall, for good cause shown to him, give further time for the payment of such taxes, in which case a certificate thereof shall be filed by the governor in the office of the comptroller, stating the reasons therefor.

(Supplement of April 21, 1896, P. L., 319.)

209. Comptroller to report list of delinquents. Governor to issue proclamation declaring repeal of charter.

SEC. 2. On or before the first day of May in each year the comptroller shall report to the governor a list of all the corporations which for two years next preceding such report have failed, neglected or refused to pay the taxes assessed against them under any law of this state as above, and the governor shall forthwith

issue his proclamation, declaring under this act of the legislature that the charters of these corporations are repealed. § 210-2

210. Proclamation to be filed and published.

SEC. 3. The proclamation of the governor shall be filed in the office of the secretary of state, and published in such newspapers and for such length of time as the governor shall designate.

211. Penalty for exercising powers under charter after proclamation.

SEC. 4. Any person or persons who shall exercise or attempt to exercise any powers under the charter of any such corporation after the issuing of such proclamation shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or a fine not exceeding one thousand dollars, or both, in the discretion of the court.

212. Attorney-general may proceed against corporations in arrears; receiver may be appointed.

SEC. 5. After any corporation of this state has failed and neglected for the space of two consecutive years to pay the taxes imposed on it by law, and the comptroller of this state shall have reported such corporation to the governor of this state, as provided in said amendatory act, then it shall be lawful for the attorney-general of this state to proceed against said corporation in the court of chancery of this state for the appointment of a receiver, or otherwise, and the said court in such proceeding shall ascertain the amount of the taxes remaining due and unpaid by such corporation to the state of New Jersey, and shall enter a final decree for the amount so ascertained, and thereupon a *feri facias* or other process shall issue for the collection of the same as other debts are collected, and if no property which may be seized and sold on *feri facias* shall be found within the said state of New Jersey, sufficient to pay such decree, the said court shall further order and decree that the said corporation, within ten days from and after the service of notice of such decree upon any officer of said corporation upon whom service of process may be lawfully made, or such notice as the court shall direct, shall assign and transfer to the trustees or receiver appointed by the court, and chose in action, or any patent or patents, or any

§ 213-4 assignment of, or license under any patented invention or inventions owned by, leased or licensed to or controlled in whole or in part by said corporation, to be sold by said receiver or trustee for the satisfaction of such decree, and no injunction theretofore issued nor any forfeiture of the charter of any such corporation shall be held to exempt such corporation from compliance with such order of the court ; and if the said corporation shall neglect or refuse within ten days from and after the service of such notice of such decree to assign and transfer the same to such receiver or trustee for sale as aforesaid, it shall be the duty of said court to appoint a trustee to make the assignment of the same, in the name and on behalf of such corporation, to the receiver or trustee appointed to make such sale, and the said receiver or trustee shall thereupon, after such notice and in such manner as required for the sale under *feri facias* of personal property, sell the same to the highest bidder, and the said receiver or trustee, upon the payment of the purchase money, shall execute and deliver to such purchaser an assignment and transfer of all the patents and interests of the corporation so sold, which assignment or transfer shall vest in the purchaser a valid title to all the right, title and interest whatsoever of the said corporation therein, and the proceeds of such sale shall be applied to the payment of such unpaid taxes, together with the costs of said proceedings.

213. Governor may correct mistake where corporation inadvertently reported.

SEC. 6. Whenever it is established to the satisfaction of the governor that any corporation named in said proclamation has not neglected or refused to pay said tax within two consecutive years, or has been inadvertently reported to the governor by the comptroller as refusing or neglecting to pay the same as aforesaid, that the governor be and he is hereby authorized to correct such mistake, and to make the same known by filing his proclamation to that effect in the office of the secretary of state.

214. Governor, with advice of attorney-general, may renew void charters.

1. If the charter of any corporation heretofore or hereafter created, shall become inoperative or void by proclamation of the

governor, or by operation of law, for non-payment of taxes, the § 215
governor, by and with the advice of the attorney-general, may, at any time within two years thereafter, or after the default in the payment of such taxes, upon payment by said corporation to the secretary of state of such sum in lieu of taxes and penalties as to them may seem reasonable, but in no case to be less than the fees required as upon the filing of the original certificate of incorporation, permit such corporation to be reinstated and entitled to all its franchises and privileges, and upon such payment as aforesaid the secretary of state shall issue his certificate entitling such corporation to continue its said business and its said franchises.

2. Nothing herein contained shall relieve said corporation from penalty of forfeiture of franchises in case of failure to pay future taxes imposed as in said act provided.

(Supplement of March 25, 1898; P. L., p. 182.)

215. Proceedings for readjustment of excessive or unjust assessment.

1. The officers of any corporation who shall consider the tax levied under the provisions of an act to which this act is a further supplement, excessive or otherwise unjust, may make application to the state board of assessors for a review of the assessment and a readjustment of the tax; *provided*, there be filed with the said board within three months from the date of assessment a petition of appeal, duly verified according to law, stating specifically the grounds upon which the appeal is taken and the reasons why the tax is considered excessive or unjust; the state board of assessors shall thereupon proceed to investigate the contentions raised by the said petition of appeal; and for the purpose of such hearing, the officers of said corporation may be summoned to appear before said board, either in person or by attorney, and questioned as to the statements set forth in the said petition of appeal; if, in the opinion of a majority of the board, it shall appear that the tax so levied as aforesaid is excessive or unjust, they shall thereupon require the officers of the corporation to file with the board a corrected return, and upon said corrected return the assessment shall be adjusted and the tax reduced or amended as in the opinion of the board shall seem proper.

(Supplement of April 8, 1897; P. L., p. 178.)

§ 216-7 216. **Right of appeal waived after three months.**

§ 250 2. If the petition of appeal shall not be filed within three months from the date of assessment, as aforesaid, the right to appeal to the state board shall be considered and treated as having been waived and the amount of tax levied shall be payable and collected as other taxes levied by said board.

217. **Taxes illegally assessed to be refunded.**

When any corporation upon which taxes have been or shall be levied under the provisions of the act to which this is a supplement shall afterwards be found by the state board of assessors to be not liable under the said act for such tax, it shall be the duty of the said board to report and certify to the comptroller of the treasury the fact that such corporation has been found to be exempt from the tax imposed by the said act, and to cancel and declare null and void any taxes which may have been or shall be imposed upon such exempted corporation, and if any corporation has paid or shall pay the tax so improperly levied, the comptroller of the treasury shall be and is hereby authorized upon receipt of such certificate, to draw his warrant upon the state treasurer in favor of the proper officer of such corporation for any and all of such taxes which have been or shall be paid into the state treasury.

(Supplement of March 1, 1888, P. L., p. 118.)

"We understand this supplement to be applicable to cases in which this court, on *certiorari*, adjudges the tax imposed to be unlawful in whole or in part, and to enable the court in such cases, by proper proceedings against the state board of assessors and the financial officers of the state, to compel the restoration of the unlawful tax paid. Thus the court can administer complete justice between the state and the corporation, without restraining the collection of the tax." (*Singer Sewing Machine Co. v. Assessors*, 54 N. J. Law, 90.)

Miscellaneous Acts.

250. **Expenses of investigating to be paid by delinquent corporations.**

On the neglect or refusal of a corporation incorporated under the laws of this state or doing business therein to furnish the information prescribed by law to any state official required to publish a report on the standing and condition of such corporation, the expenses of the investigation authorized to be made because of such neglect or refusal shall be borne by said delinquent corporation, and may be recovered therefrom in an

action of debt in any court of competent jurisdiction in this state § 251-4
by the person authorized to make such investigation.

[An act relative to the expense of investigating corporations delinquent
in making returns, approved April 21, 1896. P. L., p. 321.]
P. L. 1895, p. 741.

251. Certain words not to be part of name of corporation.

1. No corporation shall hereafter be organized under the provisions of "An act concerning corporations" (Revision of 1896), approved April twenty-first, one thousand eight hundred and ninety-six, or any amendment thereof or supplement thereto, with the words "insurance" or "safe deposit" or "trust company" or "bank" as a part of its name, and no certificate of incorporation shall be hereafter received for filing or record or be filed or recorded in any office in this state for the purpose of effectuating its incorporation.

See also P. L. 1899, p. 431, § 1; p. 450, § 1; p. 468, § 1.

252. Corporations not to use said words by amendment.

2. No corporation heretofore organized or doing business under the aforesaid act shall, by change or amendment of its name, use the words "insurance" or "safe deposit" or "trust company" or "bank" or any of them as part of its name, and no certificate of change or amendment shall be hereafter received for filing or record or be filed or recorded in any office in this state for the purpose of effectuating such change.

253. Existing corporations not affected.

3. Nothing herein contained shall, however, be construed to apply to or affect the name of any corporation whose certificate of incorporation has heretofore been filed with the secretary of this state.

(Supplement of April 23, 1897; P. L., p. 274.)

254. Liabilities created by statutes of other states not to be enforced in this state.

1. No action or proceeding shall be maintained in any court of this state against any stockholder, officer or director of any domestic corporation for the purpose of enforcing any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country.

§ 255

255. Same subject.

2. No action or proceeding shall be maintained in any court of law of this state against any stockholder, officer or director of any domestic or foreign corporation, by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any court of this state other than in a nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties.

(Supplement of March 30, 1897; P. L., p. 124.)

The object of this statute is to regulate the enforcement in the state courts of New Jersey of claims against the resident stockholders of domestic and foreign corporations arising out of statutory liability created by the laws of other states.

Chief Justice Magie, at circuit, on September 29, 1898, in the case of *Western National Bank v. Skillman* (see 21 N. J. L. J., p. 375), refused where this act was set up in defence to nonsuit an action to enforce a liability under the Kansas statutes incurred *prior to the passage of the act*, holding that the act was in violation of the provision of the New Jersey constitution that the legislature shall not pass any law "impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made."

Independent of statutory provisions to the contrary the trend of recent decisions seems to be that the courts of one state will enforce against its citizens a stockholder's liability created by the statutes of another state, if such liability is held to be contractual, but not if penal.

Most of the reported cases have arisen under the double liability of stockholders' statutes of Kansas.

The Court of Appeals of New York has decided that such double liability belongs to a class of obligations which the courts are not required by comity to enforce. (*Marshall v. Sherman*, 114 N. Y., 9.)

The Supreme Courts of both Massachusetts and Illinois have, in recent cases, decided that such liability is contractual and may be enforced in the courts of those states. (*Hancock National Bank v. Ellis*, 42 L. R. A., 396; *Bell v. Farwell*, 176 Ill., 489.)

As to penal liability, the Supreme Court, in 1858, held that an action brought by a creditor of a New York manufacturing company against a resident of New Jersey, to recover on a liability incurred under a statute

of New York making directors personally liable for corporate debts for failure to file annual reports, cannot be enforced in this state, on the ground that one state will not enforce a penal statute of another state. (*Derrickson v. Smith*, 27 N. J. Law, 166.) § 256-7

256. Certain corporations required to pay employes wages at least every two weeks.—In 1899 an act was passed by the legislature entitled “An act to provide for the payment of wages in lawful money of the United States every two weeks” (P. L. 1899, p. 69) which requires every corporation “organized under or acting by virtue of or governed by the provisions of ‘An act concerning corporations (Revision of 1896),’ in this state” to pay its employes in lawful money of the United States at least every two weeks. The act makes invalid any agreement between the employer and employe for payment at longer intervals. Corporations violating the act are guilty of misdemeanor and may be punished by a fine not exceeding one hundred dollars and not less than twenty-five dollars for each violation.

257. Corporation may lease its property and franchises to another corporation.—Any corporation of this state, except railroad and canal corporations, may hereafter, with the assent of two-thirds in interest of its stockholders, either in person or by proxy, lease its property and franchises to any corporation, and every corporation of this state is hereby authorized to take the lease or any assignment thereof, for such terms and upon such conditions as may be agreed upon, and any such lease or assignment, or both, heretofore made, are hereby validated; *provided, however*, that nothing herein contained shall be construed to authorize any corporation which is now specifically prohibited by law or by its certificate of incorporation from leasing its property or franchises to do so, nor to authorize the leasing by any corporation without the consent of the legislature, when such consent is now specially required by any law of this state.

(“An Act concerning corporations,” approved March 24, 1899, P. L. 1899, p. 334.)

“It may also be considered settled that a corporation cannot lease or dispose of any franchise needful in the performance of its obligations to the state, without legislative consent. (*Black v. Delaware & Raritan*

§ 258 *Canal Co.*, 24 N. J. Eq., 465; see also *Thomas v. Railroad Co.*, 101 U. S., 71; *Stockton v. Central R.R. Co.*, 50 N. J. Eq., 52, 65; Thompson on Corporations, §§ 5352-5361.)

So far as domestic corporations are concerned the act is sweeping in effect and embraces telegraph, telephone and gas companies.

Does it embrace street railway and traction companies?

An important question is whether a domestic corporation may transfer its franchises to a *foreign corporation*. By the language of the statute domestic corporations are permitted to lease "*to any corporation*." The absence of the limiting words "of this state" is noticeable, but is this equivalent to "corporations of this or any other state" so that foreign corporations are clearly included?

Such sanction is not to be implied; it must rest upon a clear expression of the legislative intention. (*Stewart v. Lehigh Valley R. R. Co.*, 38 N. J. Law, 513)

The words "other railroad or canal company of this state or otherwise" were held not to include foreign corporations. (*Black v. Delaware & Raritan Canal Co.*, 24 N. J. Eq., at p. 475.)

The Court of Errors and Appeals refused to determine the question whether the words "any corporation" included foreign corporations, but added "they probably do not include every foreign corporation or every domestic corporation." (*Stewart v. Lehigh Valley R. R. Co.*, 38 N. J. Law, at p. 514.)

The trend of the decisions in New Jersey would seem to be to deny to foreign corporations the right to take over and exercise franchises of domestic corporations.

258. **Chancellor may summarily investigate complaints touching elections. May restrain persons from exercising offices pending investigation.**—Any person who may be aggrieved by or complain of any election for directors, or any proceeding, act or matter in or touching the same, may make application by petition to the chancellor, who, after requiring reasonable notice to be given to the adverse party or to those who are to be affected thereby, shall proceed forthwith and in a summary way to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election so complained of, or order a new election, or make such order and give such relief in the premises as right and justice may require.

Pending the hearing and determination of any application to investigate an election of directors the chancellor may by order restrain the persons claiming to have been elected to the office of

director from exercising any of the functions and duties of the § 259
office.

(Supplement of March 24, 1899. P. L. 1899, p. 563.)

This act confers upon the Chancellor jurisdiction over corporate elections concurrent with that of the Supreme Court. The Chancellor is enabled, however, to give more prompt relief than the Supreme Court, as he may at the outset of the proceedings restrain the persons claiming to be elected as officers from exercising their office during the pendency of the proceedings. Under the law as it stood before this act was passed, the Chancellor always refused to take jurisdiction of cases affecting corporate elections unless there was some element of fraud, breach of trust, or breach of agreement, or other specific ground for equitable relief. (See *Johnson v. Jones*, 23 N. J. Eq., 216, 226; *Mechanics' Nat. Bank v. Burnet Mfg. Co.* 32 N. J. Eq., 236, 239; *Kean v. Union Water Co.*, 52 N. J. Eq., 813.)

259. Errors and omissions in certificate of incorporation cured by amendment.—Whenever in the certificate of incorporation or organization of any corporation organized under any general act of the legislature of this state, there shall be any error or omission in the recital of the act under which said corporation is created, or in the omission of any other matter which is required to be stated in said certificate, it shall and may be lawful for said corporation to correct such error in the manner following: The board of directors of such corporation shall pass a resolution declaring that such error exists and that said corporation desires to correct the same, and shall call a meeting of the stockholders of said corporation to take action upon such resolution; the meeting of said stockholders shall be held upon such notice as the by-laws provide, and in the absence of such provision, then upon ten days' notice given personally or by mail; if two-thirds in interest of all the stockholders shall vote in favor of the correction of such error or omission, a certificate of such action shall be made and signed by the president and secretary under the corporate seal; which said certificate shall be acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of all the stockholders of said corporation, shall be filed in the office of the secretary of state, and upon the filing thereof, the certificate of incorporation or of organization shall be deemed to be corrected and amended accordingly, and the filing

§ 260—1 of said certificate in conformity with this act shall have the same force and effect as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

(Supplement of March 21, 1899. P. L. 1899, p. 174.)

This act is not of great importance. It is said to have been passed in the interest of a water company. The company was organized under the Water Companies Act of 1876. The certificate of incorporation recited that it was incorporated under the provisions of "An Act for the construction, maintenance and operation of waterworks for the purpose of supplying cities, towns and villages of this state with water," approved April 21st, 1875, whereas said act was as a matter of fact approved April 21st, 1876. The error was not discovered until long after the certificate had been recorded and filed, and as a matter of precaution the directors of the company are said to have procured the passage of the above act and immediately filed an amended certificate of incorporation correcting the error. Sections 27 and 28 fully cover cases of correction of errors.

260. Shares of stock may be taken and sold on execution.—

Any share or interest in any bank, insurance company or other joint stock company, that is or may be incorporated under the authority of this state, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution, in the same manner as goods and chattels.

("An act respecting any execution." G. S., p. 1415, § 4.)

The shares are not bound by delivery of the *fi. fa.* to the sheriff against the owner, but may be transferred before an actual levy. (*Princeton Bank v. Crozer*, 22 N. J. Law, 383; *Rogers v. Stevens*, 8 N. J. Eq., 167; *Voorhis v. Terhune*, 50 N. J. Law, 147.)

261. Officer having custody of books to give certificate to sheriff.—The clerk, cashier, or other officer of such company, who has at the time the custody of the books of the company, shall upon exhibiting to him the writ of execution, give to the officer having such writ a certificate of the number of shares or amount of the interest held by the defendant in such company; and if he shall neglect or refuse so to do, or if he shall willfully give a false certificate thereof, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or

false certificate, to be recovered in an action on the case against § 262 him.

(*Id.*, § 5.)

262. Proceedings when such officer is a non-resident. Notice of levy.—When the clerk, cashier, or other officer of any joint stock company that is or hereafter may be incorporated under the authority of this state, who has the custody of the books of registry of the stock thereof, shall be non-resident in this state, it shall be the duty of the sheriff or other officer, receiving a writ of execution issued out of any court of this state against the goods and chattels of a defendant in execution holding stock in such company, to send by mail a notice in writing, directed to such non-resident clerk, cashier or other officer, at the post-office nearest his reputed place of residence, stating in such notice that he, the said sheriff or other officer, holds such writ of execution, and out of what court, at whose suit, for what amount, and against whose goods and chattels such writ has been issued, and that by virtue of said writ, he, the said sheriff or other officer, seizes and levies upon all the shares of the stock of such company held by the defendant in execution on the day of the date of such written notice; and it shall also be the duty of such sheriff or other officer, on the day of mailing such notice, as aforesaid, to affix and set up upon any office or place of business of such company, within his county, a like notice in writing, and on the same day to serve like notice in writing upon the president and directors of said company, or upon such of them as reside in his county, either personally or by leaving the same at their respective places of abode; and the sending, setting up and serving of such notices in the manner aforesaid, shall constitute such levy taken, a valid levy of such writ upon all shares of stock in such company, held by the defendant in execution, which have not at the time of the receipt of such notice by the said clerk, cashier or other officer, who has custody of the books of registry of the stocks thereof, been actually transferred by the defendant; and thereafter any transfer or sale of such shares by the defendant in

§ 263 execution, shall be void as against the plaintiff in said execution, or any purchaser of such stock at any sale thereunder.

(*Id.*, § 6.)

As to duty of sheriff in levying writ of execution upon stock, see *Voorhis v. Terhune*, 50 N. J. Law, 147.

263. **Non-resident officer to return statement and certificate, &c. Penalty for failure, &c.**—That the non-resident clerk, cashier, or other officer in such company, to whom notice in writing is sent, as prescribed in the preceding section, shall thereupon send forthwith, by mail or otherwise, to the officer having such writ, a statement of the time when he received such notice, and a certificate of the number of shares held by the defendant in such company at the time of the receipt by him of such notice, not actually transferred on the books of said company; and the said sheriff or other officer shall on receipt by him of such certificate, insert the number of such shares in the inventory attached to said writ; and if such clerk, cashier, or other officer in such company, neglect to send such certificate as aforesaid, or if he shall willfully send a false certificate, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to be recovered in an action on the case against him; but the neglect to send, or miscarriage of such certificate, shall not impair the validity of the levy upon the stock.

(*Id.*, § 7.)

CRIMES.

PROVISIONS OF "AN ACT FOR THE PUNISHMENT OF CRIMES (REVISION OF 1898)," P. L. 1898, P. 794, SPECIALLY APPLICABLE TO CORPORATIONS.

[The original section numbers are given.]

167. **Embezzlement.**—Any person who, holding an office of trust and profit under the authority of this state, or under any public or private corporation existing under the laws thereof, who shall embezzle any of the money, property or securities committed to his keeping, with intent to defraud the state, or any county thereof, or any city, borough, township, body corporate or person, or shall fraudulently dispose of the same, shall be guilty of a high misdemeanor.

172. **Fraudulent appropriation of corporate property.**—Any person who, being a director, member or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purpose other than the use or purpose of such body corporate or public company, any of the property of such body corporate or public company, shall be guilty of a misdemeanor.

173. **Keeping fraudulent accounts.**—Any person who, being a director, public officer or manager of any body corporate or public company, shall, as such, receive or possess himself of any of the property of such body corporate or public company, otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor.

174. **Willful destruction of books, making false entries, &c.**—Any person who, being a director, manager, public officer or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate or falsify any book, paper,

writing or valuable security belonging to the said body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular in any book of accounts or other document belonging thereto, shall be guilty of a misdemeanor.

175. **Publishing false statements.**—Any person who, being a director, manager or public officer of any body corporate or public company, shall make, circulate or publish or concur in making, circulating or publishing any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of any such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor.

179. **Embezzlement by servants, agents, &c.**—Any servant, employee or agent of any individual or incorporated company, who shall take or receive any money, bank bill or note, of or above the price or value of twenty dollars, belonging to his master, employer, or said incorporated company, with intent to defraud such master, employer or incorporated company thereof, and shall willfully retain and appropriate to his own use the said money, bank bill or note, knowing the same to belong to his master, employer, or said incorporated company, shall be guilty of a misdemeanor.

200. **Issuing false stock.**—Every president, vice-president, director, cashier, treasurer, secretary or other officer, and every agent of any bank, insurance company, railroad company, manufacturing company, or of any other corporation, who shall willfully or designedly sign, with intent to issue, transfer, sell or pledge, or cause to be issued, transferred, sold or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or who shall willfully or designedly sign, with intent

to issue, transfer, sell or pledge, or cause to be issued, transferred, sold or pledged, any certificate or other evidence of the ownership or transfer of any share or shares in such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, the signing, issuing, transferring, selling or pledging of which, by such president, vice-president, director, cashier, treasurer, secretary or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, and every such president, vice-president, director, cashier, treasurer, secretary or other officer or agent who shall willfully, designedly or fraudulently issue, transfer, sell or pledge any such certificate or other evidence, or any such instrument as aforesaid, with intent to prejudice, injure, damage or defraud any person, body politic or corporate, shall be guilty of a high misdemeanor.

CRIMINAL PROCEDURE.

PROVISIONS OF "AN ACT RELATING TO COURTS HAVING CRIMINAL JURISDICTION AND REGULATING PROCEEDINGS IN CRIMINAL CASES (REVISION OF 1898)," P. L. 1898, P. 866, SPECIALLY APPLICABLE TO CORPORATIONS.

[The original section numbers are given.]

61. **Summons against corporations, how issued and served.**—When any indictment shall be found, or information filed by the attorney-general, against any corporation, city, borough or township, it shall and may be lawful for the attorney-general or prosecuting attorney for the state to cause a summons or notice to be directed to the said corporation, city, borough or township, in its corporate name, commanding or notifying the said corporation, city, borough or township to appear at the said court, to answer to such indictment or information, a copy of which summons or notice shall be served on the president, or other head officer of the said corporation, or clerk of said city, borough or township, or left at his dwelling-house or usual place of abode, at least six entire days before the time at which the said corporation, city, borough or township are by said summons or notice required to appear; and in case the president or other head officer of the corporation cannot be found in the county in which said indictment shall have been presented or information filed, to be served with a copy of said summons or notice as aforesaid, and has no dwelling-house or other usual place of abode within the said county, then a copy of said summons or notice may be served on the clerk, cashier, superintendent or secretary of the said corporation, if any there be in the said county in which the said indictment shall have been found or information filed, and if there be no clerk, cashier or secretary of said corporation found in said county, then on one of the directors of said corporation, or left at his usual place of abode six entire days before the commencement of the said term to which the said summons or notice shall be returnable.

62. **Proceedings after return "served," &c.**—When the sheriff or other officer shall return such summons or notice "summoned" or "served," the said corporation, city, borough or township shall be considered as in court, and as appearing to said indictment or information; and the court shall order the clerk to enter an appearance for said corporation, city, borough or township, and indorse the plea of not guilty on said indictment or information, and further proceedings may then be had thereon, in the same manner as if the said corporation, city, borough or township had appeared and pleaded not guilty thereto; and if the said corporation, city, borough or township shall be convicted on said indictment or information, the said court may proceed to pass judgment thereon, and cause process of execution to be issued to the sheriff of the county against the goods and chattels or lands and tenements of the said corporation, city, borough or township, for the amount of the fine and costs which may be awarded against them, in the same manner as on a judgment in a civil action; and the said sheriff shall proceed to sell the goods and chattels or lands and tenements of the said corporation, city, borough or township on the said execution, in the same manner as on executions issued in a civil suit.

63. **Process "not served."**—In case the sheriff or other officer shall return such summons or notice "not summoned" or "not served," and an affidavit shall be made to the satisfaction of the court, that the same could not be served as heretofore mentioned in this act, or in case the sheriff or other officer shall make affidavit that he hath made diligent inquiry, and cannot ascertain the name of any president, secretary or director of said corporation, resident in the county in which the said indictment shall have been found or information filed, then the court shall make an order directing the said corporation to cause their appearance to be entered, and to plead to said indictment or information on or before the first day of the next term of the said court, a copy of which order shall, within twenty days, be inserted in such one of the public newspapers printed in this state, as the court may

direct, for at least six weeks; and if the said corporation shall not appear within the time limited by such order, or within such further time as the court shall appoint, then on proof made of the publication of such order, in manner aforesaid, the court being satisfied of the truth thereof, shall order the clerk to enter an appearance for said corporation, and indorse a plea of not guilty on said indictment or information, and thereupon further proceedings may be had on the said indictment or information, in the same manner as if the said corporation had appeared and pleaded not guilty thereto; and in case of conviction execution may be issued against said corporation, and proceedings had thereon, as in the preceding section mentioned.

ACKNOWLEDGMENT OF DEEDS, &C.

PROVISIONS OF "AN ACT RESPECTING CONVEYANCES (REVISION OF 1898)," P. L. 1898, P. 670.

[The original section numbers are given.]

21. **What instruments may be acknowledged.**—All deeds or instruments of the nature or description following, of or affecting the title to any lands, tenements or hereditaments, lying and being in this state, or any interest therein, may be acknowledged or proved and then recorded in the office of the clerk of the court of common pleas of the county where the said lands, tenements or hereditaments are situated, that is to say: conveyances, releases, declarations of trust, mortgages, defeasible deeds or other conveyances in nature of a mortgage, releases or deeds in which the intention to operate as releases from the lien and effect of any mortgage or judgment is plainly manifested, assignments and discharges or satisfaction pieces of mortgages, assignments of judgments, letters of attorney for any sale, conveyance, assurance, acquittance or release, leases for life or any term not less than two years, or any assignments thereof absolute, or by way of mortgage, or security, agreements for sale, or written consents of any person to the execution by an executor, administrator with the will annexed, or trustee, of a power for sale, conveyance, acquittance, or release, or writings to declare or direct any use or trust of real estate, or which though made for some other purpose, are yet by the terms of any recordable deed or will which refers to such writings, made to operate as such declarations or directions, **and all other instruments that may have been heretofore or may be hereafter directed by any statute to be acknowledged or proved and recorded;** and also in the office of the clerk of the court of common pleas of the county in which the goods, chattels and personal property lie, unless otherwise directed in this or any other act, the following deeds and instruments not of or affecting the title to land, but of or affecting goods, chattels and personal property in this state, that is to say: chattel mortgages, assignments, releases and

discharges thereof, contracts for the conditional sale of goods and chattels, deeds of personal property to literary, benevolent, religious or charitable institutions upon particular trusts therein specified or otherwise.

Original and amended certificates of incorporation are required to be proved or acknowledged as required for deeds of real estate. (General Corporation Act, *ante*, sections 9, 26a, 27 and 259.)

22. Acknowledgments taken in this state.—If any deed or instrument of the nature or description set forth in the twenty-first section of this act, heretofore made and executed, or hereafter to be made and executed, shall have been, or shall be acknowledged by the party who shall have executed or who shall execute it, such party then having happened or happening to be in this state, whether residing here or elsewhere, before the chancellor, one of the justices of the supreme court, one of the masters in chancery of this state, one of the judges of any court of common pleas of any county in this state, one of the commissioners of deeds appointed for any county in this state, a clerk of the court of common pleas of any county, a deputy county clerk, a surrogate or deputy surrogate of any county, or a register of deeds of any county of this state, whether such officer was or is appointed for, or whether he was or is in the said county where such lands, tenements or hereditaments are situated or where such acknowledgment was or is taken or not, **such officer having first made known the contents thereof to such party making such acknowledgment, and being also satisfied that such party is the grantor in such deed or instrument, of all which the said officer shall make his certificate** on, under, or annexed to said deed or instrument, or if it shall have been or shall be proved, by one or more of the subscribing witnesses to it, such witness or witnesses then having happened or happening to be anywhere in this state, whether residing here or elsewhere, that such party signed, sealed and delivered it as his voluntary act and deed, before any one of the above-named officers then having been or being anywhere in this state, and if a certificate of such proof signed by such officer shall be written

upon, or under, or be annexed to such deed or instrument, then every such deed or instrument shall be received in evidence in any court of this state, as if the same were then and there produced and proved.

For forms of acknowledgment and proof by subscribing witness, see pp. 190-1, *post*. See also p. 23, *ante*.

23. **Acknowledgments taken out of this state, but within the United States.**—If the party who shall have executed or who shall execute any such deed or instrument of the description or nature above set forth in the twenty-first section of this act, or the witnesses thereto shall have happened or shall happen to be in some other state in the Union or territory thereof, or in the District of Columbia, whether such party or witnesses resided or reside in this state or in such state, territory, or district, or elsewhere, then such acknowledgment or proof as is above prescribed, made before and certified by the chief justice of the United States, or any associate justice of the supreme court of the United States, or **any master in chancery of this state**, or any circuit or district judge of the United States, or any judge or justice of the supreme or the superior courts, or the chancellor, of any state in the Union, or territory thereof, or District of Columbia, or any **foreign commissioner of deeds for New Jersey**, duly certified, under the official seal of such commissioner, or before and by any mayor or other chief magistrate of any city, borough, or corporation in such state, territory, or district, duly certified under the seal of such city, borough, or corporation, of which he was or is mayor or chief magistrate, such circuit or district judge, judge or justice of such supreme or superior court, or chancellor of such state, foreign commissioner of deeds, mayor or other chief magistrate then having been or being anywhere within the circuit, district, state territory, district, city, borough, or corporation, for which he was or is appointed, or before and by any judge of any court of common pleas of such state, territory, or district, such judge then having been or being within the county or district in and for which he was or is such judge, duly certified that he was or is such judge under the great seal of such

state or under the seal of the county court of the county or district in which it is made and in and for which he was or is such judge, or before and by any officer in any such state of the Union, territory thereof, or District of Columbia, then residing and being anywhere in such state, territory or district, authorized at the time of such proof or acknowledgment by the laws of such state, territory, or district, to take the proofs and acknowledgments of deeds or conveyances of lands, tenements, or hereditaments, lying and being in such state, territory, or district; *provided*, in such case, the certificate of acknowledgment or proof shall be accompanied by a **certificate** under the great seal of such state, territory, or district, or **under the seal of some court of record** of the county in which it was or shall be made, **that the officer before whom such acknowledgment or proof was or shall be made was, at the time of the taking of said proof or acknowledgment, authorized by the laws of such state, territory, or district, to take the acknowledgments and proofs of deeds or conveyances for lands, tenements, or hereditaments in such state, territory, or district, shall be as good and effectual as if such acknowledgment or proof had been made within this state before the chancellor thereof and had been certified by him.**

For form of certificate of county clerk or other officer authenticating notary's signature, see p. 23, *ante*.

24. **Acknowledgments taken out of the United States.**—If the party who shall have executed or who shall execute any such deed or instrument of the description or nature above set forth in the twenty-first section of this act, or the witnesses thereto, shall have happened or shall happen to be in any foreign kingdom, state, nation, or colony, whether such party or witnesses resided or reside in this state, or in such foreign kingdom, state, nation, or colony, or elsewhere, then such acknowledgment or proof as is above prescribed, made before and certified by any master in chancery of New Jersey, or any public ambassador, minister, consul, vice-consul, consular agent, *chargé d'affaires* or other representative of the United States for the time being, to or at any such foreign kingdom, state, nation, or colony, or before

and by any court of law of such foreign kingdom, state, nation, or colony, or before and by any notary public, or mayor or other chief magistrate of and then having been, or being within, any city, borough, or corporation of such foreign kingdom, state, nation, or colony, in which city, borough, or corporation such party or witnesses may have happened or may happen to be, certified in such cases by such court of law, notary public, mayor or chief magistrate in the manner in which such acts are usually authenticated by them, shall be as good and effectual as if such acknowledgment or proof had been made within this state before the chancellor thereof and had been certified by him.

30. **Appointment of foreign commissioners.**—The governor of this state is hereby authorized to appoint and commission such number of commissioners (who may be either male or female) resident in each of the states and territories of the United States and in the District of Columbia, as he may deem expedient, and where such appointment shall not be incompatible with the laws of such state, territory or district where such commissioner shall reside ; which commissioners shall be called and be denominated “foreign commissioners of deeds for New Jersey,” and may be described in their appointments and commissions, and may describe themselves in their certificates as “foreign commissioners of deeds for New Jersey,” or “commissioners for taking the acknowledgment or proof of deeds for New Jersey in” (such state, territory or district).

31. **Term of office.**—Every foreign commissioner appointed by virtue of this act shall hold his office for the term of three years, but shall be removable from office at the pleasure of the governor, and in case he shall remove out of the state, territory or district in which he shall reside at the time of his appointment, his commission shall thereupon become void ; and in case it shall be made to appear to the governor that any such commissioner shall charge more or greater fees than are allowed by law, it shall be his duty to remove such commissioner from office.

32. **Certain commissioners may reside in this state.**—It shall and may be lawful for any commissioner for the state of New

Jersey, in and for the state of Pennsylvania or New York, heretofore appointed, or who may hereafter be appointed, to reside in the state of New Jersey; but nothing in this act shall be so construed as to empower such commissioner to exercise the duties of his office outside the states of Pennsylvania or New York, as the case may be, and the acts of any such commissioner who may reside or who may have resided in the state of New Jersey during his term of office, or any part thereof, shall be as valid and effectual in law as if he had during such time resided in the state of Pennsylvania or New York, as the case may be.

35. **The foreign commissioners of deeds for New Jersey shall attest each of their official acts, by an official seal;** impressions of such seals, in wax or other appropriate substance, shall be filed, with their official oaths hereinafter prescribed, in the office of the secretary of state of New Jersey, and the official certificates of such commissioners thus attested may be indorsed upon or annexed to any instrument of writing for use or record in this state, and shall be entitled to full faith and credit; and the forms of such official certificates, to be made by such officers, shall be in conformity with the laws of this state.

36. **Fees.**—The fee for each certificate of acknowledgment or of proof before such foreign commissioner, shall be one dollar, and for each oath administered, twenty-five cents, and no more.

GENERAL ASSIGNMENT ACT.

[Applicable to corporations; see section 24, p. 159, *post.*]

AN ACT CONCERNING GENERAL ASSIGNMENTS (REVISION OF ONE THOUSAND EIGHT HUNDRED AND NINETY-NINE). APPROVED MARCH 21, 1899, P. L. 1899, P. 146.

1. Assignments must be for equal benefit: Preferences void.—

Every conveyance or assignment made by a debtor of his entire estate in trust to an assignee or assignees, for the creditors of such debtor, shall be made for their equal benefit in proportion to their several demands, to the net amount that shall come to the hands of said assignee for distribution, and all preferences attempted to be made in such assignment of one creditor over the other, or whereby any one creditor shall be first paid or have a greater proportion in respect of his claim than another, shall be deemed fraudulent and void, and shall render such assignment void.

2. Contents of assignment: Acknowledged and recorded.—

Every debtor residing in this state making a conveyance or assignment of his entire estate, in trust, to an assignee or assignees, for the creditors of such debtor (the said debtor being hereinafter referred to as the assignor, and the said conveyance or assignment as a general assignment) shall acknowledge the same, or cause the same to be proved according to law, so that the same may be recorded as a deed of land, and shall annex to such general assignment an inventory, under oath or affirmation, of his estate, real and personal, together with a list of his creditors and the amount of their respective claims according to the best of his knowledge, but such inventory shall in nowise be conclusive as to the quantum of the assignor's estate, real and personal, but the assignee shall be entitled to any other property which may belong to the assignor at the time of making such general assignment; in case such assignor shall willfully violate any of the provisions of this section, the said general assignment shall not thereby be rendered invalid or be excluded from the operation of this act, but in such case such assignor shall remain liable to his creditors for any remaining indebtedness after distri-

bution by the assignee, and shall not receive any of the benefits hereinafter provided for assignors in the twenty-second section of this act.

3. **Duty of assignee.**—The said assignee, upon receiving such general assignment mentioned in the preceding section of this act, shall forthwith record the same if the same has been acknowledged or proved according to law, in the county where such assignor resides, and in any other counties or states where he may deem it necessary to record the same, and shall also forthwith give public notice by advertising at least once a week for four weeks successively, in one of the newspapers printed in this state, circulating in the neighborhood where such creditors reside, making known thereby that such general assignment has been made, and when made, and setting forth a general description of any business carried on by the assignor and the place where the same was so carried on, and that all claims of creditors against said estate must be presented under oath or affirmation to the said assignee within three months from the date of said general assignment, or the same will be barred from coming in for a dividend of said estate ; and the said assignee shall also, within thirty days after the date of said general assignment, mail a copy of said notice, with postage prepaid, to every creditor of said assignor, addressed to such creditor at his usual post-office address, so far as said assignee can ascertain the same; and the said assignee shall forthwith exhibit to the surrogate of the county wherein such assignor resides, under oath or affirmation, a true inventory and valuation of said estate so far as has come to his knowledge, and shall, after exhibiting such inventory and valuation, forthwith enter into bond to the ordinary of this state, in such amount and with such sufficient security as the orphans' court of the said county, or any judge thereof, may approve, for the faithful performance of his trust, which bond shall be filed in the office of the surrogate of the said county; until such inventory, valuation and bond shall be filed the said assignee shall not proceed to the discharge of his trust under the said general assignment, further than may be necessary for the preservation

of the assigned estate; *provided, however*, that the said orphans' court, or any judge thereof, before such inventory, valuation and bond shall be filed, may, by order, authorize the said assignee to perform such other acts in the administration of said trust as said court or judge may deem necessary for the protection of said creditors upon such terms as said court or judge may impose; in case of failure to give such notice, or mail the same as above provided, the said orphans' court may extend and fix the time for the presentation of claims and the giving and mailing notice thereof as aforesaid.

4. List of creditors filed by assignee with surrogate. When court may extend time.—At the expiration of the said period of three months from the date of said general assignment, or in case of an extension of time for the presentation of claims by said orphans' court as aforesaid, then at the expiration of such extended time, the said notice having been duly given and mailed as aforesaid, the said assignee shall file with the surrogate of the said county a true list, under oath or affirmation, of all such creditors of said assignor as shall have proved their claims as such before him, with a true statement of their respective claim, and due proof of the publication of the notice of said general assignment, and the mailing of such notice as provided in the third section of this act, which proof shall give in detail the names of the persons to whom, with the respective addresses to which and the time when such notices were mailed, and within ten days after the filing of said list and statement the said assignee shall mail notice, with the postage prepaid, of the filing thereof to every creditor of said assignor, who has proved his claim, addressed to such creditor at his usual post-office address, so far as said assignee can ascertain the same, and shall, within said ten days, also file with said surrogate due proof of the mailing of the last-mentioned notice as above prescribed; in case of failure to file the said list and statement, or to file proof of the publication and mailing of said notice provided in the third section of this act, or in case of failure to mail the said notice of the filing of said list and statement, or to file the proof thereof, the said orphans' court may extend and fix

the time for the performance of any or all of the duties of the assignee above prescribed, which he may have so failed to perform.

5. Creditor must set forth in claim any pledge he may hold.—Every creditor presenting a claim under the provisions of this act to an assignee, shall set forth in his claim any mortgage or pledge of property of the assignor, or lien thereon, which he holds, or which stands as security for his debt, or upon failure so to do, shall be deemed to have waived and abandoned such mortgage, pledge or lien, as against the said assignee; any creditor whose debt stands secured by any such mortgage, pledge or lien, shall have a right to dividends only upon the balance of his debt after deducting the value of his said mortgage, pledge or lien, which value may be ascertained by agreement between him and the assignee, or by the said orphans' court upon application of said creditor or said assignee, and after such ascertainment the said mortgage, pledge or lien, if the same shall not have been realized on, shall stand as security only for the amount which shall have been so ascertained; any creditor may present not only any debt due, but any debt to grow due, making in such case a reasonable rebate when interest is not accruing on the same.

6. Exceptions may be filed. Action of court.—It shall be lawful for the said assignee, or any creditor or other person interested, by himself or attorney, at any time within thirty days after the said list and statement shall have been filed and notice thereof shall have been mailed to the creditors, as directed in the fourth section of this act, to file in said orphans' court exceptions to the claim or demand of any creditor exhibited as aforesaid, and said court shall cause a notice to be served on said creditor, in such mode as the said court may direct, and said court shall then proceed to hear the proofs and allegations of the parties at the term at which such exceptions shall have been filed, or at any subsequent term, and adjudicate thereon; and in case of such hearing before the orphans' court the evidence and proceedings before the orphans' court, upon the application of either party, shall be reduced to writing by the register of the court or by a ste-

nographer, under the direction of said court, appointed by said court for that purpose.

7. **Trial by jury may be demanded.**—It shall be lawful for the said assignee, or any creditor or other person interested in any account to which exceptions have been filed as aforesaid, to demand a trial by jury, whereupon the orphans' court in which such exceptions shall be filed shall certify said exceptions, and the claim or demand excepted to, to the circuit court of the county, to be tried in a summary way by a jury before said court, under such rules as the said court may from time to time prescribe; and the verdict, unless set aside by a new trial granted by said circuit court, shall be returned to the said orphans' court with the certificate of said circuit court, to be there proceeded on according to law.

8. **Dividends: Partial distribution.**—If no exceptions to any claim or demand shall be filed as provided by the sixth section of this act, or in case any exceptions shall be filed, then after the same shall have been adjudicated or settled as aforesaid, the said assignee shall proceed to make from time to time fair and equal dividends among said creditors from the assets which shall come to hand in proportion to their claims; in case the determination of any claim or claims shall be delayed by exceptions, or for any other reason, the said orphans' court may, in its discretion, on the application of the assignee or any creditor, from time to time, direct the said assignee to make such partial distribution from the assets in hand to those creditors whose claims are not in dispute as may be safely made, reserving at all times sufficient assets to secure, after all the claims shall have been adjudicated and finally settled, an equal and proportionate distribution according to the intent of this act, and the said orphans' court may also, in its discretion, upon application of said assignee, or of any creditor, take charge of the making of any or all dividends and direct the time when the same shall be made and the amount thereof.

9. **Final account. Intermediate account.**—As soon as may be, after the determination of all claims, the said assignee shall render, on oath or affirmation, a final account to the said orphans'

court in like manner and upon the same notice to creditors and others interested as is now or may hereafter be directed in regard to executors and administrators; and exceptions may in like manner be filed to such accounts and proceeded upon as prescribed in regard to executors and administrators, and the settlement and decree of said court shall be conclusive on all parties except for assets which may afterwards come to hand, or for frauds or apparent errors; the said orphans' court may, in its discretion, upon the application of said assignee or any creditor, order the said assignee in like manner to render an intermediate account, and in such case the same shall be filed in like manner and upon the same notice to creditors and others interested, and shall be subject to exceptions in the same manner as is now or may hereafter be directed in regard to intermediate accounts of executors and administrators, and in like manner such exceptions shall be heard and determined by said court.

10. **Preferred debts.**—The wages of clerks, mechanics and laborers due from the assignor at the time of making such general assignment, shall be preferred debts and shall be first paid by said assignee before any other claim or debt shall be paid, and in case any such wages shall have been earned, or partly earned, at the time of making such general assignment but shall not be then payable, the same shall be equitably apportioned and shall be paid as preferred debts as aforesaid up to the said time of making said assignment; *provided, however*, that no payment shall be made as a preferred debt to any one person to an amount exceeding three hundred dollars; and in case any claim shall receive a preference to the extent of three hundred dollars under this section, any balance of such claim yet remaining unpaid shall be entitled to all dividends to be calculated upon such balance.

11. **Reservation to assignor.**—In case of any such general assignment there shall be reserved of the goods and chattels of any such assignor having a family residing in this state, goods and chattels to the value of two hundred dollars, and all wearing apparel for the use of said assignor and his family; and it shall be the duty of the assignee, at the written demand of said assignor,

as soon after the said general assignment is executed as conveniently as may be, to cause a just and true appraisement of the assignor's goods and chattels to be made under oath or affirmation, to be taken before any person authorized to administer an oath, by three discreet and judicious persons to be selected by such assignee, at their actual value, and to set apart for the use of said assignor and his family such of the goods and chattels as he may select from such appraisement, not exceeding in value the said sum of two hundred dollars, which said appraisers shall be allowed for their services fifty cents each, to be paid by said assignee and to be allowed in his account; *provided, however*, that this section shall not apply to any general assignment of partnership property.

12. **Rent a preferred claim.**—In case of any such general assignment where the assignor shall be a tenant, all the goods and chattels of such tenant on the premises, in the possession of such tenant, shall be first bound for the payment of rent due to his landlord; and the said claim for rent in favor of the landlord, not exceeding one year's rent, shall be first paid and satisfied by the assignee out of the goods and chattels of the said tenant which were on the demised premises at the time of the assignment.

13. **Right of landlord in goods and chattels.**—If the tenant, his assignee, or any other person or persons, shall remove any goods and chattels off or from the demised premises, after the said assignment, it shall and may be lawful for the said landlord, at any time within forty days after such removal, to seize the said goods and chattels in whose hands soever the same may be found, as a distress for his said rent, and proceed with the same in the manner directed by the act concerning distresses, whether the rent by the terms of the lease be due or not, making a rebate on the sum not due, as is now or may hereafter be required, where a party suing out execution pays rent not due to the landlord.

14. **Disposal of real estate.**—Whenever any assignee shall take any real estate of said assignor under such general assignment, he shall (except as hereinafter provided) proceed to adver-

tise and sell the same in such manner as is now or may hereafter be prescribed in the case of an executor or administrator directed to sell lands by an order of the orphans' court for the payment of the debts of a testator or intestate; in all cases where any assignee as aforesaid shall deem it to be for the best interest of the creditors of the assigned estate to make sale of the whole or any portion of the real estate so assigned in trust, at private sale, the said assignee shall have the power to make a contract or contracts for such sale, which contracts shall be subject to the confirmation of the said orphans' court, and in such cases the assignee shall forthwith, upon making any such contract, present the same by petition to the said orphans' court for its action thereon, and thereupon the said orphans' court, upon such notice to the creditors as it may direct, shall hear the parties interested and either declare such contract void or confirm the same, and in case of such confirmation the said assignee shall perform the same and convey the real estate in accordance with the terms thereof, and the said assignee may, in like manner, if he at any time shall see fit so to do, submit contracts for the sale of personal estate of all kinds to said orphans' court for its action thereon, which court in like manner may declare void or confirm the same.

15. Power of assignee with reference to disposition of estate. Assignee may seek advice of court. Assignee as representative of creditors.—Every such assignee shall have as full power and authority to dispose of all the estate assigned to him in trust as aforesaid, except as may otherwise be herein provided, as the said assignor had at the time of the general assignment, and to sue for and recover in the proper name of such assignee everything belonging or appertaining to said estate, real or personal, of such assignor, and shall have full power and authority to compromise, settle and compound all claims, disputes and litigations of said assignor, and to refer the same to arbitration, and to agree with any person concerning the same, and to redeem all mortgages and conditional contracts, and generally to act and do whatsoever the said assignor might have lawfully done in the premises; and

said assignee may at any time by petition apply to said orphans' court for its advice and direction in regard to any matter or thing connected with the administration of his trust; and thereupon the said court, upon such notice to the creditors as it may direct, shall hear the parties interested who may appear and make such order or decree in the premises as it shall deem advantageous to the said creditors, and upon such proceedings the said court may authorize the said assignee to continue for such a period or periods, and under such conditions as the said court may from time to time prescribe, any business of the assignor in which the assigned estate, or any part thereof, may be invested; the said assignee, in addition to the powers which he may exercise as the successor to such assignor, shall also at all times be the representative of the creditors of such assignor, and shall have the same power to set aside conveyances, and to recover or reach assets for the benefit of the creditors of such assignor as a creditor of said assignor would have who had recovered a judgment against said assignor at the date of said assignment, and all conveyances, mortgages and transfers of property, real or personal, made by said assignor, which are void or voidable as against the creditors of such assignor, shall in like manner be void or voidable, as the case may be, as against said assignee.

16. Transfer of property within two months of assignment to give preference void. Property may be recovered.—If any person being insolvent or in contemplation of insolvency shall, within two months before the making of the general assignment for the benefit of creditors regulated by the provisions of this act, and in contemplation of making a general assignment, mortgage, pledge, assign, pay or transfer any of his property, or procure or suffer any of his property to be seized, attached or levied upon, or any lien or incumbrance to be placed or acquired thereon by legal process or otherwise, with a view to giving a preference to any creditor or person having a claim against him, or who is under any liability for him, the person receiving such preference in manner aforesaid, or to be benefited thereby, having reasonable cause to believe that such person is insolvent, or in contem-

plation of insolvency, and is contemplating making a general assignment, the said mortgage, pledge, assignment, payment, transfer, seizure, attachment, levy, lien or incumbrance shall be void as against the assignee named in such general assignment for the benefit of creditors and his successors in trust, and the said assignee may recover the property given by way of preference or the value thereof from the person so receiving the same or so benefited thereby.

17. **When court may appoint another assignee.**—In case the said assignee shall die or become incapable of executing his trust the said orphans' court shall, upon application of any party interested, appoint some suitable person or persons as assignee or assignees in the place of such assignee so dying or becoming incapable to execute the said trust; in case any assignee shall embezzle, waste or misapply any part of the trust estate in his hands or under his control, or shall neglect or refuse to execute his trust, or to perform and obey any order or decree of the said orphans' court in respect of his trust, or shall remove from the state, or for a reasonable or just cause manifested to said orphans' court shall desire to be relieved from his office as assignee, then and in every such case the said court shall have the power to remove said assignee and appoint some suitable person or persons in his stead to execute the said trust; in case it shall be made to appear to the said orphans' court that the holders of two-thirds in amount of the indebtedness entitled to a dividend desire the removal of the assignee, the said court shall make such removal and appoint some suitable person or persons in his stead to execute the said trust, and if the holders of two-thirds in amount of such indebtedness unite in nominating a person or persons, resident in the state, as such assignee, the said orphans' court shall appoint the person so nominated unless the said court shall deem him or them unsuitable; in the cases hereinbefore provided for in this section the said orphans' court may act upon the petition of any creditor or other party interested, and upon such notice to the assignee or creditors as the said court shall direct; in case of the appointment of any new

assignee he shall enter into bond to the ordinary for the faithful performance of his trust, in such amount and with such security as the said orphans' court, or any judge thereof, shall direct, and in case at any time the security given by any assignee under or by virtue of this act shall be shown to be insufficient, the said orphans' court shall direct such assignee to give such additional security, by bond to the ordinary as aforesaid, as the said court shall deem proper; upon the appointment of any new assignee as aforesaid the entire trust estate, in whatsoever form the same then may be, shall forthwith vest in such new assignee and the said orphans' court shall have the power to compel the removed assignee or the personal representative of the former assignee to account in said court for his trust, and to deliver possession of the estate in his hands to his successor, and to pay over to such successor any balance found due on such accounting, and to execute such conveyance or conveyances of the trust estate to his successor as the said court may deem proper; and every such new assignee shall have all the powers and perform all the duties (not already performed) conferred and imposed by the said assignment or by this act upon the original assignee named in said assignment.

18. **Inventory, &c., surrogate's fees.**—The inventory and list of creditors, with the statement of claims required to be filed by the assignee as aforesaid, shall be proved before the surrogate of said county, and be recorded by him in a book to be provided for that purpose and to be called "assignee's book," and for the taking proof of such inventory and list, and for the recording thereof, the surrogate shall be entitled to the same fees as are allowed by law for like services in relation to inventories of the property of deceased persons.

19. **Compensation to assignee.**—Such commissions and allowances shall be made to the assignee or to the personal representatives of a deceased assignee, or to a person who has been removed by the court from his office as assignee for any cause other than his misconduct, on any intermediate or final account as the said court shall consider just.

20. **Fees.**—The same fees shall be allowed in all proceedings under this act to the officers of the orphans' court, as are allowed for like services performed in the settlement of accounts of executors or administrators under the laws of this state.

21. **If creditor fail to exhibit his claim.**—If any creditor shall not exhibit his claim within three months from the date of such general assignment, or within such other time as may have been fixed by the court for that purpose, such claim shall be barred of a dividend except as hereinafter provided; whenever any creditor shall have omitted to file his claim or claims within the time limited by law, and a final dividend shall not yet have been made, it shall be lawful for such creditor, at any time prior to such final dividend being made, to present his claim or claims under oath or affirmation to the assignee, and the same shall thereupon be entitled to share in any dividend which may be made after such presentation thereof; upon the presentation of any such claim the said assignee, before allowing the same, shall give notice thereof by mail, with postage prepaid, to the other creditors who have proved their claims as directed by the fourth section of this act in relation to claims proved in time, and the same shall be subject to all exceptions by said assignee or the other creditors that a claim filed in time would be subject to and may be proceeded with and adjudicated upon in the manner provided in the sixth and seventh sections of this act.

22. **Creditors not exhibiting claims.**—Nothing in this act shall be taken or understood as discharging said assignor from liability to his creditors, who may not choose to exhibit their claims, either in regard to the persons of such assignor or to any estate, real or personal, not assigned as aforesaid, but with respect to the creditors who shall come in under said general assignment and exhibit their demands as aforesaid for a dividend they shall be wholly barred from having afterwards any action or suit at law or equity against such assignor or his representatives; unless on the trial of such action, or hearing in equity, the said creditor shall prove fraud in the said assignor with respect

to the said general assignment or concealing his estate, real or personal, whether in possession, held in trust or otherwise.

23. Power of court to compel assignee's performance of duty.—The orphans' court may, from time to time, if necessary, by citation and attachment, compel said assignee to proceed to the execution of the duties required by this act, until final settlement and distribution as aforesaid, and to perform and obey its orders and decrees.

24. Assignment by corporation.—Any corporation organized under the laws of this state may make a general assignment under the provisions of this act, and in such case shall be deemed, for the purposes of this act, a resident of the county in which its principal office shall be located, and the orphans' court and the surrogate of such county shall act and have jurisdiction of the proceedings; but in case the said corporation shall, at any time after the making of such general assignment, be adjudged insolvent and a receiver thereof be appointed by the court of chancery of this state, the said court of chancery shall have the power, at any time when it may deem it for the interest of the stockholders or creditors of said corporation, to remove the assignee of such corporation and to direct and compel the said assignee to transfer and convey the trust estate in his hands to such receiver to be administered under the direction of said court of chancery, and the said assignee shall thereupon present his accounts to said court of chancery for settlement and allowance as the said court of chancery may direct; and the said assignee may be made a party defendant in any bill or petition filed in said court of chancery to have such corporation adjudged insolvent and a receiver thereof appointed, and may be restrained, enjoined and removed in such proceeding and subjected to all orders and decrees therein; the said court of chancery may, if it see fit, appoint the said assignee of such corporation the receiver thereof, and in all cases where the said court of chancery shall as aforesaid take control of the trust estate assigned as aforesaid, the jurisdiction of the said orphans' court in the premises shall terminate and the said estate shall be administered as assets of

an insolvent corporation in the same manner as if no such general assignment had been made.

25. **Partnership assignment.**—When such general assignment shall be made by partners in business, the same may include only the partnership property or may also include the several estates of the partners, or any of the partners may, upon such general assignment of the partnership property being made, make also a separate general assignment of his individual estate ; in all cases where a general assignment shall include both a partnership and an individual estate the same shall be kept separate in all proceedings under this act, and all notices and accounts in relation thereto shall plainly distinguish between the different estates, and all proceedings, orders and decrees shall recognize the rights and equities of the different classes of creditors, to the end that the property assigned may be equitably applied to the payment of the claims of said creditors; in order to bring a general assignment of partners in business within the regulative operation of this act, it shall be sufficient if any one of them resides in this state, in which case the proceedings shall be had in the county where such partner resides, and in case such partners or any of them reside in different counties of this state, then the proceedings may be had in either or any one of such counties, but in such case it shall be the duty of the assignee to cause such proceedings to be had in the county where the principal place of business of said partners is located, if such assignee knows of any such principal place of business and any partner resides in such county.

26. **In case of compromise: Action of court.**—In case after a general assignment shall have been made under the provisions of this act the assignor shall make an agreement of compromise or composition with his creditors, it shall be lawful for the assignee to re-assign and re-convey to said assignor all the trust estate in his hands, free and discharged from the trust, upon compliance with the provisions of this section; in every such case the said assignor shall present a petition to the said orphans' court, duly verified by him, setting forth the said agreement and praying for relief in the premises; and the said court shall thereupon make an

order that all the creditors of said assignor shall appear on a certain day therein named and show cause why said agreement should not be confirmed and the said assignee be directed to re-assign and re-convey the trust estate in his hands to the said assignor; the said assignor shall cause said order to be published for three weeks, at least once in every week, in such newspaper or newspapers as the said court may select, and shall also cause a copy thereof to be mailed, at least ten days before the return of said order, with the postage prepaid, to every creditor of said assignor, addressed to such creditor at his usual post-office address, so far as said assignor can ascertain the same; the said court, on the return day of said order, or on such adjourned day as it may appoint, on being satisfied by affidavit or otherwise that the requirements of this section in relation to the publication of said order to show cause and the mailing of copies thereof have been complied with, and upon being further satisfied that the said agreement had been executed by all the creditors of said assignor entitled to a dividend of the trust estate, shall order, upon such terms as it shall deem just, that the said agreement be confirmed and that the said assignee, within such time as said order shall specify, shall re-convey and re-assign to said assignor all the trust estate in the hands of such assignee, in whatsoever form the same may be, and the said order may contain such directions regarding the said re-conveyance and re-assignment as shall comport with the terms of said agreement.

27. **Appeal to prerogative court.**—Any person aggrieved by any order or decree of the orphans' court, or judge thereof, may, under the provisions of this act, appeal from the same to the prerogative court; *provided*, that such appeal be demanded within thirty days after such order or decree.

28. **Time within which action may be brought against assignee.**—All actions at law or suits in equity which may hereafter be brought against any such assignee on account of the taking, appropriating, selling or disposing of any property by such assignee as a part of the trust estate belonging to him under the

assignment, shall be commenced within nine months from the time when the cause of action shall arise, and not afterwards.

29. **Repealer: Saving clause.**—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but this repealer shall not revive any act heretofore repealed; the repeal of any statutory provision by this act shall not affect or impair any act done or right vested or accrued, or any proceeding commenced before such repeal shall take effect; but every such act done or right vested or accrued or proceeding commenced, shall remain in full force and effect to all intents and purposes as if such provision so repealed had remained in force, excepting that all suits or proceedings now pending under such statutory provisions hereby repealed shall be conducted as near as may be in accordance with the practice and procedure as changed or prescribed by this act.

NOTES OF DECISIONS.

ACKNOWLEDGMENT.

1. **Form of acknowledgment by corporations.**—There has been some controversy in New Jersey as to the form of acknowledgment by a corporation and as to whether a corporation could acknowledge a deed, or whether it had to be proved by a subscribing witness. The Court of Errors in 1891 decided that the deed of a corporation may be lawfully acknowledged by the representative of the corporation having authority to execute the deed in its behalf. (*Lovejoy v. Hopper*, 21 Atl. Rep., 298.)

2. **Proving execution.**—The usual practice, however, is to prove the execution of the deed by a subscribing witness. An affidavit proving the signature of the president of the corporation to a conditional bill of sale, and the affixing of the corporate seal, was held to be a sufficient compliance with P. L. 1895, p. 158 (2 G. S., p. 2706) requiring such contracts to be "acknowledged." (*General Electric Co. v. Transit Equipment Co.*, 42 Atl. Rep., 101.)

AMENDMENT.

See CERTIFICATE OF INCORPORATION, 2.

ASSESSMENT.

1. **Assessment on unpaid subscriptions: Insolvency.**—When a corporation is insolvent and its business is ended, the subscribers for or holders of its unpaid stock are assessable for only so much of what is unpaid on the stock as will satisfy the claims of corporate creditors and meet the expenses of winding up its affairs. An order for such an assessment may be made by the Court of Chancery in the suit wherein the corporation was adjudged to be insolvent, and when so made its propriety cannot be questioned in suits brought against the stockholders for its enforcement. Such an order is the result of an exercise of judicial power, and therefore should be made only after a reasonable opportunity has been afforded to the stockholders to be heard in the matter. (*Cumberland Land Co. v. Clinton Hill Lumber Mfg. Co.*, 22 N. J. L. J., 111.)

ATTACHMENT.

1. **Attachment of shares of stock of corporation.**—Shares of stock of a corporation may be attached by virtue of the Attachment Act (G. S., pp. 98 *et seq.*). (*Castle v. Carr*, 16 N. J. Law, 394; *Curtis v. Steever*, 36 N. J. Law, 304, 307.)

2. **Same.**—Shares cannot be attached if the certificate has been delivered or transfer has been made on the books of the company before the issue of the attachment. (*State, Bush v. Warren F. Co.*, 32 N. J. Law, 439. See also *Broadway Bank v. McElrath*, 13 N. J. Eq., 24; *Matthews v. Hoagland*, 48 N. J. Eq., 455, 486, and cases cited.)

3. **Same: Transfers as collateral security.**—A transfer or pledge of stock as collateral security, without a transfer on the books of the company, but accompanied by a blank power of attorney, will protect the holder against the claims of an attaching creditor. (*Broadway Bank v. McElrath*, 13 N. J. Eq., 24. See also *Gibbs v. Craig*, 58 N. J. Law, 664; *Hood v. McNaughton*, 54 N. J. Law, 429.)

See FOREIGN CORPORATIONS, 4, 7, 8.

BONA FIDE HOLDERS.

See BONDS, 3.

BONDS.

1. **Bonds: No statutory limitation as to amount of.**—The question is frequently asked whether there is any limitation under the laws of New Jersey on the amount of bonds or other indebtedness which a corporation may create. So far as the ordinary business corporation is concerned the statutes are silent, although railroad companies are limited in the amount of such indebtedness. This question is doubtless suggested by the provisions of the stock corporation law of New York and the laws of some of the other states limiting the amount of indebtedness to the amount of the paid-up capital stock. The general rule seems to be that in the absence of an express provision of statute there is no restriction. The leading case on the subject is *Barry v. Merchants' Exchange Co.*, 1 Sanford Ch. Rep. (N. Y.) 280, 310, where it was said—

"It is in vain to look in our laws for any express restriction of corporations, to the amount of their capital in the use of their credit. The history of those institutions in this country shows that no such restriction exists. And our own experience informs us that many of them at this day, owe debts contracted in various modes, to twice the amount of their capital stock, and still appear to be perfectly sound and flourishing. The practice has been uniform and universal, and its legality so far as I know, was never before questioned, although in the multitude of corporations which have failed, after defrauding the community, and have subsequently figured in our courts many occasions have arisen for raising the point. The legislature has sometimes interposed its authority by expressly limiting the use of the corporate credit; thus showing that unless so restricted, it was unlimited."

For the New Jersey cases on the power to issue bonds, see p. 10, *ante*.

2. **Issue of bonds below par.**—Bonds of a New Jersey corporation of the face value of \$40,000, and stock of the par value of \$5,000, were issued for \$33,000, in cash, \$15,000 of which was to be applied by the corporation issuing the bonds in taking up a prior issue of bonds. The agreement for the sale of the bonds and stock was made in New York. *Held* that the New York laws as to usury applied, and that the defense of usury was not available. (*Franklin Trust Co. v. Rutherford, B. S. & C. Electric Co.*, 41 Atl. Rep., 489. See also *Lane v. Watson*, 51 N. J. Law, 186; *aff'd* 52 N. J. Law, 550.)

3. **Bonds: Bona fide holders.**—A receiver had been appointed. An agreement was made to give each creditor four time notes. The receiver was discharged. Two of the creditors received no notes. Payment of the first series of the notes was defaulted. It was then proposed to issue corporate bonds and take up the notes. A majority of the creditors accepted, and bonds were issued to them, some retaining their notes and others being paid in cash. *Held* that the creditors who took bonds issued to take up the notes were not *bona fide* holders. (*Skirm et al. v. Eastern Rubber Mfg. Co.*, 40 Atl. Rep., 769. See also *Bank v. Sprague*, 21 N. J. Eq., 530; *Sewell v. R. R. Co.*, 9 Atl. Rep., 785.)

4. **Bonds: Right of stockholders to buy.**—Stockholders owing money to the corporation upon their subscriptions for stock have the right to buy and pay for the company's bonds and either hold them or pass them upon the market. (*Bergen v. Porpoise Fishing Co.*, 42 N. J. Eq., 397.)

5. **Lien of bondholders.**—The lien of the holders of mortgage bonds relates to the time when the mortgage was recorded, and is superior to a mechanic's lien, although the bonds themselves were not issued until after the erection of the building had been commenced. (*Central Trust Co., Trustee, v. Continental Iron Works*, 51 N. J. Eq., 605.)

6. **Bonds: Vendor estopped to deny validity.**—One who has accepted bonds of a corporation and sold them, and has afterwards bought all the company's property at a receiver's sale, subject to all encumbrances, is estopped to deny the validity of the bonds. (*De Kay v. Voorhis*, 36 N. J. Eq., 37; *aff'd* 36 N. J. Eq., 549.)

7. **Coupon bonds: Negotiability.**—Coupon bonds are negotiable securities. (*Boyd v. Kennedy*, 38 N. J. Law, 146; *Copper v. Jersey City*, 44 N. J. Law, 634.)

8. **Overdue bonds: Rights of holders.**—As to the distinction between current corporate bonds and bonds that are overdue, as affecting the rights of holders thereof, see *Midland R. R. Co. v. Hitchcock*, 37 N. J. Eq., 549.

BOOKS.

See INSPECTION, I.

BY-LAWS.

1. **By-laws: Limitation in power to make.**—The corporation, under a general power in its charter to make by-laws for its government, cannot enlarge its powers by any such by-law. (*Stewart v. Odd Fellows' Mutual Life Ins. Assn.*, 12 N. J. L. J., 110.)

2. **By-laws: Construction of.**—A provision in the by-laws of a corporation that at special meetings of the stockholders questions should be determined by the vote of a "majority of stockholders" was construed to mean a majority in interest of the stockholders, the by-laws providing that all questions as to elections should be governed by the Corporation Act of 1896. (*Weinburgh v. Union Street Railway Advertising Co.*, 55 N. J. Eq., 640.)

CERTIFICATE OF INCORPORATION.

1. **Nature of certificate.**—The certificate of incorporation is a contract between the shareholders which cannot be affected by any change made in it by virtue of a subsequent Act of the Legislature, and it can only be effectually changed by virtue of some Act of the Legislature in force at the time the certificate is filed, which should be read into the contract. (*Meredith v. N. J. Zinc & Iron Co.*, 55 N. J. Eq., 211; *aff'd* 56 N. J. Eq., 454.)

2. **Certificate of incorporation: Amendment of.**—General Statutes, page 951 (P. L., 1889, page 412), authorizing corporations to issue common and preferred stock, provided that the holders of the preferred stock should be entitled to receive a fixed yearly dividend to be expressed in the certificate. Pursuant to its certificate of incorporation, which authorized it to issue preferred stock entitling the holders to a certain dividend if earned, without reservation of any right of the stockholders to modify any such provisions, a corporation issued certificates of preferred stock entitling the holders to the dividends named in the certificate of incorporation, without reservation. *Held* that the certificate of incorporation constituted a contract between the stockholders and the certificate of shares a contract between the stockholders and the company, entitling the holder to the dividend named in the certificate, which could not be reduced without his consent. It was held also that a later act (P. L., 1893, page 444, Section 6) authorizing a corporation, with the consent of a majority in interest of its stockholders, to amend its certificate of incorporation as of the date of recording and filing of the original, did not authorize a corporation to reduce the rate of dividend expressed in a preferred stock certificate, where the company reserved no right either in its certificate of incorporation or the certificate of stock to change such rate, since such alteration would impair the obligation of the contract with the stockholder. Where one corporation made an agreement with another, by which the former was to reduce the dividends payable on its preferred stock, and the latter was to pay such reduced dividends direct to the stockholders, the alteration of the certificate of incorporation of the former so as to provide for such reduced dividends will be enjoined at the instance of a non-assenting holder of the preferred stock, since his legal remedy would be inadequate. (*Pronik v. Spirits Distributing Co.*, 42 Atl. Rep., 586.)

CHARTERS.

See CERTIFICATE OF INCORPORATION.

CONFLICT OF LAWS.

See RECEIVERS, 1.

FOREIGN CORPORATIONS, 5, 6.

CONTRACT FOR SERVICES.

See RECEIVERS, 10, 11.

CORPORATE FUNDS.

See TREASURER, 1.

DEBTS.

1. **"Debts due" under Section 62 of the Corporation Act.**—Where a corporation had no bank account, and the treasurer deposited the amounts which he received for the company in his own account in the bank, in his individual name, and not as an officer of the company, *held* that this amount was a debt due the corporation within the meaning of Section 62 of the Corporation Act, and was not cash in bank belonging to the corporation and going to the receiver on his appointment. (*Van Steenberg v. E. R. Parsel Pearl Button Co.*, 19 N. J. L. J., 151.)

2. **Debts bound by service of notice.**—So far as a corporation and its receiver are concerned the debts are bound for the application of the execution creditor's debt by the service upon the corporation of the notice of election. (*Id.*)

DIRECTORS.

1. **Power of directors to mortgage property.**—As to power of directors to mortgage property see *Hoyt v. Bridgewater Copper Mining Co.*, 6 N. J. Eq., 253.

See ELECTIONS.

DOMICILE.

1. **Domicile of corporation, may be more than one.**—In *National Fire Insurance Company of Hartford v. Chambers*, 53 N. J. Eq., 468, it was held that a corporation is capable of having several domiciles and of being sued at the same time in more than one jurisdiction, the Court of Chancery repudiating the doctrine of *Douglas v. The Insurance Company*, 138 N. Y., 209.

ELECTIONS.

1. **Elections of directors: When irregularities will not invalidate.**—The stockholders of a corporation organized under the General Act may, at a special meeting duly called for the purpose, increase the number of directors of the company by an amendment to the by-laws taking immediate effect. In the absence of other provision in the by-laws it would then be the right and duty of the stockholders to elect the additional directors, but it seems that such election should be held at a meeting subsequently called with due regard to Sections 33 and 36 of the Act. In the case at bar, however, all of the stock was represented at the meeting and voted on. It was held therefore that, notwithstanding the informality of the meeting, its acts would not be disturbed. (*In re A. A. Griffing Iron Co.*, 41 Atl. Rep., 931.)

2. **Corporation in hands of receiver may elect directors.**—A corporation in the hands of a receiver can legally hold an election for directors, and the court may order such election. (*Lehigh Coal & Navigation Co. v. Central R. R. of N. J.*, 5 N. J. L. J., 214.)

3. **Elections: Evidence of power to vote.**—Under the statute the books of the corporation constitute the only evidence as to who are the stock-

holders entitled to vote at an election of directors. (In re *Election of Directors of Cedar Grove Cemetery Company*, 61 N. J. Law, 422.)

4. **Elections: Investigation by Supreme Court.**—*Quære*: Does the jurisdiction of the Supreme Court to summarily investigate complaints touching elections, under Section 42 of the General Act, extend beyond elections by stockholders? (In re *A. A. Griffing Iron Co*, 41 Atl. Rep., 931.)

5. **Elections: Investigation by Supreme Court.**—Where the stockholders of a corporation assemble in two bodies at the time and place appointed for an election of directors, and cast their ballots at separate polls, the court, in ascertaining the result of the election, pursuant to investigation under Section 42 of the General Act, may consider the ballots cast at both polls. (In re *Election of Directors of Cedar Grove Cemetery Co.*, 61 N. J. Law, 422.)

EXECUTION.

See RECEIVERS, 9.

DEBTS, 1, 2.

FOREIGN CORPORATIONS.

1. **Foreign corporations: Service of process on.**—Service of process on a person whose only connection with the company was a contingent one which had ceased before the commencement of the action, was held not good. (*Security Insurance Co. v. Hass*, 17 N. J. L. J., 374.)

See also as to service on foreign corporations, *N. J. & Camden Rolling Mill Co. v. Swede Iron Co.*, 32 N. J. Law, 15.

2. **Foreign corporations: Mortgage: Exercise of "corporate functions."**—A mortgage is an executed contract, and a proceeding to foreclose it is not an action upon a contract such as is contemplated by the statute forbidding unqualified foreign corporations from bringing actions on contracts made within the state. The taking of a mortgage to secure a debt, by a foreign corporation not in the business of loaning money, is a mere incident of its business, and is not such an exercise of its corporate functions within the state as is forbidden by the statute. (*American Net & Twine Co. v. Ginthens et al.*, 21 N. J. L. J., 190.)

3. **Foreign corporations: Presumption as to complying with N. J. Law as to doing business: Certiorari.**—In *certiorari* proceedings where the prosecutors in their reasons filed did not question the status of a foreign corporation, the court will assume on final hearing that the corporation has complied with the prerequisites to doing business in New Jersey. (*Benton v. City of Elizabeth*, 61 N. J. Law, 411; *aff'd* 61 N. J. Law, 693.)

4. **Foreign corporations: Receiver. Attachment.**—The title of a receiver of a foreign corporation will be protected against attachment by other foreign corporations. (*Merchants' National Bank of Boston v. Pennsylvania Steel Company*, 57 N. J. Law, 336.)

5. **Receivers of foreign corporations: On what grounds appointed.**—The Court of Chancery will not appoint a receiver for a foreign corporation on a mere suspicion that it is about to remove its property to another state,

or intends to commit a fraud when it is not shown to have been declared insolvent by the courts of the state of its creation. (*Smyth v. Empire Rubber Co.*, 2 N. J. L. J., 154.)

6. **Receivers of foreign corporations: When appointed.**—Whether, after a foreign corporation doing business in this state, has passed into the hands of a receiver in the state of its domicile, a receiver will be appointed in this state, and, if so, whether the domiciliary receiver will be appointed here, will depend upon the volume and kind of business done in this state, and whether any special interest of the creditors or citizens in this state is likely to be involved in the settlement of the insolvent affairs. The receiver in this state is amenable alone to the direction of this court, and not to the direction of the domiciliary receiver. (*Irwin v. Granite State Provident Assn.*, 56 N. J. Eq., 244.)

7. **Attachment against foreign corporation.**—The attachment act of New Jersey (G. S. p. 99), provides, "7. That the writ of attachment may be issued against any absconding or absent female, or against any corporation or body politic not created or *recognized* by the laws of the state, in all cases in which such writ may lawfully issue against an absconding or absent male."

8. **Attachment against foreign corporation: Where it lies.**—In *Phillipsburg Bank v. Lackawanna R. R. Co.* it was held that attachment will not lie against a foreign corporation owning property in this state and transacting business here under legislative authority. (27 N. J. Law, 206; see also *State v. D. L. & W. R. R. Co.*, 30 N. J. Law, 473; *Erie Ry. Co. v. State*, 31, N. J. Law, 531; *Wheeler & Wilson Mfg. Co. v. Carty*, 53 N. J. Law, 336; *National Fire Ins. Co. v. Chambers*, 53 N. J. Eq., 496.)

FRANCHISE TAXES.

See TAXES, 1-6.

FRAUD.

See STOCK, 1, 2.

INSOLVENCY.

1. **Insolvency: What constitutes.**—For a statement of facts on which it was held that a corporation was insolvent within the meaning of Section 64 of the Corporation Act at the time it executed certain bonds and a mortgage securing the same, see *Skirm et al. v. Eastern Rubber Mfg. Co.*, 40 Atl. Rep., 769.

2. **Insolvency: What constitutes.**—In *Streit v. Citizens' Fire Insurance Co.*, 29 N. J. Eq., 21, it was held that mere impairment of capital, even though to the extent of more than one-fourth, is not *prima facie* evidence of the condition of insolvency.

See ASSESSMENT, 1.

LABORERS, 5.

PREFERENCES, 1.

RECEIVERS, 1-6, 9, 11.

INSPECTION.

1. **Inspection of books by stockholders: Chancery Court has no jurisdiction.**—The Court of Chancery has no jurisdiction to order an inspection of books. The remedy is by mandamus at law (*Rothermel v. North American Co.*, 18 N. J. L. J., 273).

INTERSTATE COMMERCE.

See TAXES, 6.

LABORERS.

1. **Laborers: Lien of.**—Section 83 of the Act refers exclusively to natural persons, and not to corporations. (In re *Barr-Dunwiddie Printing & Bookbinding Co.*, 42 Atl. Rep., 575.)

2. **Laborers: Lien of: What property covered by.**—The lien given by Section 83 of the Act covers only assets in the receiver's hands. (*Hinkle v. Camden Safe Dep. & Tr. Co.*, 47 N. J. Eq., 333.)

3. **Laborers: Lien of: Priority.**—Such lien is not prior to that of a mortgagee, whose mortgage was executed and recorded before the services were rendered. (*Hinkle v. Camden Safe Dep. & Tr. Co.*, 21 Atl. Rep., 861.)

4. **Laborers: Who are.**—The person who furnishes the labor or services of others under a contract to do the whole business of a corporation, or a particular branch of it, is not an employé, but a contractor and has no lien by virtue of Section 83. (*Lehigh Coal & Navigation Co. v. Central R. R. of N. J.*, 29 N. J. Eq., 252.)

5. **Laborers: Who are.**—A superintendent of the work of constructing a railroad voluntarily advanced his own money to pay the workmen for their work, supposing the company to be solvent. The company was afterwards adjudged insolvent. In the absence of an assignment of the claims of the workmen to him, or any agreement that he should have the benefit of their liens, it was held that he was not by subrogation entitled to the workmen's statutory liens for such payments. (*North River Construction Company's Case*, 38 N. J. Eq., 433.)

LIABILITY.

1. **Liability of stockholders. Parties to suit.**—The attorney-general is not a necessary party to proceedings to enforce liability of stockholders under the statute. (See *v. Heppenheimer*, 55 N. J. Eq., 240; *aff'd* 56 N. J. Eq., 453.)

See TREASURER, 1.

LIEN.

See BONDS, 5.

LABORERS, 1, 2, 3, 5.

RECEIVERS, 9.

STOCK, 5.

MANDAMUS.

See STOCK, 3.

MONOPOLIES.

See "TRUSTS."

MORTGAGES.

1. **Mortgage executed in violation of injunction, a nullity.**—A mortgage executed by a debtor corporation to certain creditors in violation of a temporary injunction granted in a suit by those creditors for the appointment of a receiver is an absolute nullity and acquires no validity from the subsequent dismissal of the suit with the consent of such creditors. Such mortgage, executed pending a suit to wind up the corporation as an insolvent debtor is void as being an unlawful attempt to prefer certain creditors. (*Bissell v. Besson*, 47 N. J. Eq., 580.)

2. **Mortgage. Presentation of coupons.**—When a mortgage securing payment of the principal of bonds at a specified day, and interest according to coupons attached, contains a covenant that at a fixed time after default in payment of interest and after demand the principal shall become immediately due, and the bonds and coupons are payable at a designated place, default in the payment of interest within the meaning of that covenant will result from the non-payment of the coupons, although not presented at the designated place and payment demanded. (*N. J. Paper Board & Wall Paper Mfg. Co. v Security Trust & Safe Deposit Co.*, 42 Atl. Rep., 746.)

See BONDS, 5.

DIRECTORS, 1.

FOREIGN CORPORATIONS, 2.

LABORERS, 3.

RECEIVERS, 1.

OFFICERS.

1. **Removal of officers.**—"If there be a fixed term of office removal must be for cause; but otherwise, unless limited by statute or by-law, the power to remove ministerial officers is absolute, in the body that elects, subject only to a right of action if there be a breach of contract of employment. *Thompson on Corporations*, Sections 804, 805, 820. The president of a corporation has no securer tenure than any other ministerial officer. *Ibid*, Section 4611. Our statute (Section 13) simply provides that every corporation organized thereunder shall have a president, secretary and treasurer who shall be chosen either by the directors or stockholders as the by-laws may direct and shall hold their offices until others are chosen and qualified in their stead. The by-laws of the Griffing Company directed that the directors should choose these officers, but fixed no term of office, and at the meeting of November 23d were amended so as to give express power of removal. Such an amendment has been judicially upheld in this state. *Weinburgh v. Union, &c., Advertising Co.*, 55 N. J. Eq., 640. The stockholders ratified the removal made under this authority." (In re *A. A. Griffing Iron Co.*, 41 Atl. Rep., 931.)

PREFERENCES.

1. **Insolvent corporations may not favor directors.**—A corporation in a failing condition cannot place part of its assets in the hands of a trustee

to protect any of its directors as sureties on its bonds. (*Gray v. Taylor*, 38 Atl. Rep., 951.)

RECEIVERS.

1. **Receivers: Conflict of laws: Mortgage.**—A New York corporation, in contemplation of insolvency, gave a mortgage on lands located in New Jersey, to citizens of New Jersey. The general laws of New York forbade a mortgage by a company in contemplation of insolvency. *Held* that although the company brought with it to New Jersey its charter powers, it did not bring the general laws of the State of New York; that it had power in its charter and under New Jersey laws to mortgage its property, and that the general laws of New York had no effect to restrain its action. (*Boehme v. Rall*, 51 N. J. Eq., 541.)

2. **Receivers: Cannot refuse payment of claim on ground that it was bought below par.**—The fact that a claim against an insolvent corporation was purchased for less than its par value does not authorize the receiver to refuse its allowance on the basis of par value. (*Dimmick v. W. Fred Quimby Co.*, 21 N. J. L. J., p 339.)

3. **Receivers: Who are proper persons to be appointed.**—An officer of a corporation, under whose management it became insolvent, is not a proper person to be appointed receiver. The Court of Chancery may remove a receiver for cause. When an officer of a corporation has been appointed its receiver, and it appears proper that his conduct as such officer should be investigated to ascertain whether he has not obtained an advantage which he ought not to be permitted to retain, sufficient cause for removal exists. (*McCullough v. The Merchants' Loan & Trust Co.*, 29 N. J. Eq., 217.)

4. **Receivers: When appointed.**—A receiver should not be appointed in case of insolvency where the directors are closing the affairs of the corporation and it appears that they are in all respects trustworthy. (*City Pottery Co. v. Yates*, 7 N. J. L. J., 42.)

5. **Receivers: Suit for appointment of receivers cannot be defeated by an ulterior purpose merely.**—The fact that one creditor of an insolvent corporation not about to resume its business with safety to the public or advantage to its stockholders, institutes proceedings to have the corporation adjudged insolvent and a receiver appointed, with ulterior purposes of self-advantage, will not defeat the proceedings. (*Ft. Wayne Electric Corporation v. Franklin Electric Light Co.*, 41 Atl. Rep., 666.)

6. **When receiver will be appointed: Proof necessary; What business suspended.**—Upon proper application, where the proofs clearly exhibit that the corporation is insolvent, and that there is no reasonable prospect that if left alone it will soon become safely solvent, a receiver will be appointed.

The requirement of the statute that before a receiver can be appointed, proof shall be made that an insolvent corporation will not be able to "resume" its business with safety to the public and advantage to its stockholders within a short time, does not predicate a complete suspension

but an inability to take up again and perform such functions or duties as shall have been suspended because of the insolvency, such as the payment of its current obligations. (*Ft. Wayne Electric Corporation v. Franklin Electric Light Co.*, 21 N. J. L. J., 343.)

7. **Receiver of solvent corporation: When appointed.**—It was held by the Court of Errors and Appeals, in *Sternberg v. Wolff*, 56 N. J. Eq., 389, that when, by reason of dissensions among the directors of a trading corporation, there is a deadlock in the management of its business by them, a receiver *pendente lite* may be appointed. The court said: "In *Fougeray v. Cord*, 50 N. J. Eq., 185, 756, this court did not deny the power of the Court of Chancery to appoint a receiver *pendente lite* for the management of the affairs of an incorporated company organized for the purposes of trade." (See also *Archer v. American Water Works*, 50 N. J. Eq., 33; *Edison v. Edison United Phonograph Co.*, 52 N. J. Eq., 620, 625, 626.)

When the case of *Sternberg v. Wolff* came back to the Court of Chancery, and a motion was made to appoint a receiver, Vice-Chancellor Pitney, acting upon the state of facts existing at the time and immediately before the motion was made, refused to appoint a receiver, notwithstanding the opinion of the Court of Appeals, holding that the Court of Chancery ought not to interfere with the business of a solvent corporation by the appointment of a receiver unless there is a present danger to the interests of the stockholders, consisting of a serious suspension of or interference with the conduct of the business, and a threatened depreciation of the value of the assets consequent thereon, which may be met and remedied by a receiver. In other words, it must appear that the appointment of a receiver would serve some beneficial purpose to the stockholders. (*Sternberg v. Wolff*, 56 N. J. Eq., 555.)

8. **In what courts receiver must bring suit.**—The receiver gets no power to sue in equity merely because he is an officer appointed by and amenable to the directions of the Court of Chancery. He must collect legal claims through the legal tribunals, and enforce equitable rights of the insolvent company through Courts of Equity. (*Riley v. Clarendon Oil & Refining Co.*, 20 N. J. L. J., 246.)

9. **Receivers: Lien of execution.**—If the personal property of a corporation has become bound by the delivery of a writ of execution to the sheriff, or if the judgment creditor elects to satisfy his execution out of debts under Section 62 of the Corporation Act, before the commencement of insolvency proceedings, the rights thus created will not be disturbed. (*Van Steenberg v. E. R. Parsel Pearl Button Co.*, 19 N. J. L. J., 149. See also *Van Wagoner v. Moses*, 26 N. J. Law, 570.)

10. **Receivers: Effect of appointment as to contract of agency and service.**—The appointment of a receiver for a corporation and an injunction against its contracting, collecting or assigning debts are held not to excuse it for the subsequent breach of a contract of agency made two years prior to the appointment of the receiver for a period of five years. (*Rosenbaum v. U. S. Credit System Co.*, 61 N. J. Law, 543, reversing *U. S. Credit System Co. v. Rosenbaum*, 60 N. J. Law, 294.)

11. **Receivers: Effect of appointment as to contract of service.**—B made a contract with a corporation to serve it for a term of years for a fixed salary. Before the expiration of his term of service the corporation became insolvent and a receiver was appointed, and thereby a breach of contract on the part of the corporation was occasioned. *Held*, that he was entitled to present a claim to the receiver for the amount of damages he suffered by the breach. The Chancellor said: "The insolvency, suspension of business and receivership do not extinguish the corporation's life. The Chancellor 'may' declare the charter forfeited and void, &c., consequently the rule that when a master dies the contract with his servant is terminated is not potent in this hearing." (*Spader v. Mural Decoration Company*, 47 N. J. Eq., 18.)

See ELECTIONS, 2.

FOREIGN CORPORATIONS, 4, 5, 6.

MORTGAGES, 1.

TAXES, 4.

REMOVAL OF OFFICERS.

See OFFICERS.

RE-ORGANIZATION.

1. **Re-organization of corporations: Who may enforce agreements as to new stock.**—A new company was formed to take over the assets of an old company, and an agreement was made with the stockholders of the old company to issue stock of the new company share for share for stock of the old company. *Held*, that suit for specific performance would lie at instance of an individual stockholder of the old company who might sue for himself alone, and that neither the old company nor the stockholders were necessary parties. (*Fletcher v. Newark Telephone Co.*, 55 N. J. Eq., 47.)

RESTRAINT OF TRADE.

1. **Contracts in restraint of trade.**—Contracts in general restraint of trade—that is, restraining a man from pursuing his business anywhere in the United States—are void as against public policy. Contracts in partial restraint of trade—that is those restraining a man from pursuing his business with a defined area, less than the whole country—will be enforced if the area excluded is no wider than is reasonably required for the fair protection of the covenantee in the enjoyment of the business to which the covenant relates, and not so wide as to interfere with the interests of the public. (*Trenton Potteries Co. v. Oliphant*, 56 N. J. Eq., 680.)

SALES.

See STOCK, 1, 2.

SERVICE OF PROCESS.

See FOREIGN CORPORATIONS, 1.

STOCK.

1. **Alleged fraud in sale of stock.**—Defendant (an officer of a corporation) knew that the corporation had made a favorable sale of property

which enhanced the value of the stock, which fact was known only to the directors and officers. Plaintiff had no knowledge of it, and no knowledge of facts to put him on inquiry as to it. Defendant bought the plaintiff's stock at much less than its real value, at a price for which the plaintiff in his ignorance was willing to sell it. *Held*, that there was no fraud and that there was no duty from the officers to the stockholders to make any disclosure. (*Crowell v. Jackson*, 53 N. J. Law, 656.)

2. **Misrepresentation in sale of stock.**—A person making false representations in the sale of stock is liable for the loss which the purchaser suffers by retaining the stock under the belief that the representations are true. In such cases the market value of the stock while the fraud is operative on the conduct of the purchaser is unimportant, the measure of damages is the difference between the amount paid for the stock and the value of the stock after the fraud ceased to be operative. (*Duffy v. Smith*, 18 N. J. L. J., 217; *aff'd Smith v. Duffy*, 57 N. J. Law, 679. See also *Crater v. Binninger*, 33 N. J. Law, 513.)

3. **Mandamus to compel company to issue stock.**—The subscribers to the capital stock of a telegraph company upon payment of one-third of the par value caused to be issued to themselves certain shares of full-paid capital stock. At the same meeting of stockholders it was resolved that certain shares of stock be issued to said subscribers for services alleged to have been rendered by them to the company, without any account or statement of the amount due them. In such a case the presumption is that full-paid stock was issued upon payment of only a third of its par value. To the enforcement of a contract thus tainted with illegality the court will not lend its sanction. The court said that the relators had an adequate remedy by suit for damages, and were not entitled to mandamus; that mandamus will not issue where the contract is unexceptionable in its character. (*State ex rel. Morton v. Timken*, 2 Atl. Rep., 783.)

4. **Power of corporation to purchase its own stock.**—Under the General Corporation Act of 1896 there is an implied grant of power to corporations to purchase shares of their own capital stock whenever such purchase is required for legitimate corporate purposes. Defendant employed plaintiff as bookkeeper. Before securing the position it was agreed that he should purchase \$800 worth of stock of the company, which, when he severed his connection with the company as bookkeeper, should be repurchased by it. After a few months the company came under the control of new stockholders, who ordered plaintiff to do work which he declared was not according to agreement. The company refusing to accede to his views, he quit and demanded that they buy the stock he had bought. The company declined. The plaintiff brought suit to compel them to do this, and for damages. The defendant corporation pleaded *ultra vires*. The Supreme Court decided that the contract was within the power of the corporation, and that the plea of *ultra vires* was inadmissible. (*Chapman v. Ironclad Rheostat Co.*, 41 Atl. Rep., 690.)

5. **Stock: Lien of corporation on for debt due by stockholder.**—In the absence of provision in the charter creating a lien for indebtedness

of stockholders, a by-law, of which a transferee of a certificate of stock had no notice, is insufficient to create such a lien. A provision in the charter that the stock should be transferable in accordance with the by-laws relates only to the formality of transfer. (*Drexel v. Long Branch Gas Co.*, 3 N. J. L. J., 250)

See ATTACHMENT, 1, 2, 3.

SUBSCRIPTION.

See ASSESSMENT, 1.

TAXES.

1. **Franchise taxes under Act of 1888.**—The tax imposed by the Act of 1888 is not a property tax, and is not subject to diminution because some of the corporation's capital is invested in letters patent of the United States. (*Marsden Co. v. State Board of Assessors*, 61 N. J. Law, 461.)

2. **Franchise taxes: Exemption of manufacturing companies.**—As to what constitutes carrying on manufacturing in the state, see *American Glucose Co. v. State*, 43 N. J. Eq., 280.

3. **Franchise taxes: Exemption.**—An electric company is not entitled to exemption as a manufacturing corporation under Section 4 of the Act of 1892, on a showing that it has a plant in the state and one outside, to which the products of the former are sent for finishing, and that such product costs more than 50 per cent. of the finished product, and a claim that the cost of patents owned by it and covering the processes conducted at the home branch represents the greater part of the capital, where it also appears that the New Jersey plant cost less than the foreign plant, and where it is not shown how much of the stock represented by patents is represented by foreign and domestic patents, respectively. (*Storage Battery Co. v. State Board of Assessors*, 60 N. J. Law, 66; aff'd 61 N. J. Law, 290.)

4. **Franchise taxes: Returns do not bind receiver.**—A receiver of an insolvent corporation is not estopped by a return of the secretary made immediately prior to the appointment of a receiver, from questioning a franchise tax based thereon. (*Kirkpatrick v. Assessors*, 57 N. J. Law, 53.)

5. **Franchise taxes: Preference of, in case of insolvency.**—The franchise tax assessed against a corporation after the appointment of a receiver is not an indebtedness entitled to share in the distribution, but is only entitled to be paid after the creditors have been paid. (*Crews v. U. S. Car Co.*, 42 Atl. Rep., 272.)

6. **Franchise taxes: Interstate commerce.**—The Federal Constitution does not invalidate a general tax imposed upon domestic corporations generally because it incidentally affects one that under state authority is engaged in interstate commerce. The yearly license fee imposed upon miscellaneous corporations by the Act of 1884 is levied upon the right of the company to exist in corporate form, without regard to the powers that under such form it may exercise. Such fee may be exacted by the

state from which the right is derived, without reference to the nature of the business the corporation may be authorized to carry on, and is constitutional even as against a domestic corporation created for the purpose of engaging in commerce with an adjoining state. The right of corporate existence is in itself indivisible, and the fee therefore must necessarily be an entirety, no matter where the property of the company is situated or how its capital is invested or employed. (*State v. State Board of Assessors*, 16 N. J. L. J., 210. See also *Honduras Commercial Co. v. State Board of Assessors*, 54 N. J. Law, 278.)

TREASURER.

1. **Liability of treasurer for corporate funds.**—Where a treasurer, with the company's consent, deposited funds in a bank to his credit, he was held entitled to allowance for deposit lost by failure of the bank. It was also held that he was not liable for interest on funds of the company in his hands, unless he had used them so as to earn interest, or for his own purposes. (*Fougeray v. Laurel Springs Land Co.*, 41 Atl. Rep., 694.)

"TRUSTS."

1. **"Trusts": Power of Court of Equity to restrain.**—The Court of Equity does not possess power to restrain a corporation organized under the forms of law from performing acts within its corporate power because the purpose of the incorporators may have been to establish a monopoly. *Quo warranto* is the appropriate procedure to challenge the rights of a corporation to exercise its franchises. (*Stockton v. American Tobacco Co.*, 55 N. J. Eq., 352; aff'd 56 N. J. Eq., 847.)

2. **Unlawful combinations.**—"It may be conceded that if this corporation had entered into an agreement with other manufacturers of these goods, whether those manufacturers were individuals or corporations, by which agreement prices were to be fixed and competition paralyzed, such an arrangement would be a subject of equitable cognizance. Such was the case of *Stockton, Attorney-General, v. Central Railroad Co. and Philadelphia & Reading Railroad Co.*, 50 N. J. Eq., 52. In that case the defending corporations had entered into a contract to lease the Central Railroad to what was substantially the Philadelphia & Reading Railroad. The lease was declared not only to be *ultra vires*, but to be made for the purpose of creating a monopoly in coal. The right of either of these companies to regulate its own business, whether it involved the fixing of the price for which coal should be sold or to whom it should be sold, was not involved, nor were the corporate powers of the company curtailed. What was done by the Court of Chancery was to annul a contract made by one company with another corporation, entirely aside from its corporate power and executed for an illegal purpose." (*Id.* at pp. 367, 368.)

3. **Unlawful combinations.**—Where the members of a manufacturers' association produce nearly the whole quantity of an article necessary to the comfort and health of the community, and have agreed to make their prices such as the majority of the members shall prescribe, a scheme to

buy and combine into one company the plants of a majority of the members, and thus secure the ability to dictate prices—is an effort to create a monopoly in an article of general necessity and is against public policy. (*Trenton Potteries Co. v. Oliphant*, 56 N. J. Eq., 680.)

4. **Consolidation held no monopoly.**—Consolidation of two rival concerns engaged in mining zinc ore was held not against public policy as tending to create a monopoly. (*Meredith v. N. J. Zinc & Iron Co.*, 55 N. J. Eq., 211; aff'd 56 N. J. Eq., 454.)

5. **Non-competitive contracts.**—Contracts for non-competition are within the exercise of powers incident to corporate management and business. (*Ellerman v. Chicago Junc. Ry., &c., Co.*, 49 N. J. Eq., 217.)

VOTING.

See ELECTIONS.

PRECEDENTS AND FORMS.

BEFORE ORGANIZATION.

Form 1.

SUBSCRIPTION AGREEMENT BEFORE ORGANIZATION.

Whereas, the organization is contemplated of a corporation under an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," to be known as the _____ or by such other name as may be selected, with a capital stock of not less than \$ _____ for the purpose of *(state in detail the business proposed to be carried on by the company)*, and it is desired by the undersigned to become a shareholder in the said corporation:

Now, THEREFORE *(insert name of subscriber)*, the undersigned, does hereby promise and agree to, and with *(insert name of promoter or person organizing the corporation)* of _____, in consideration of the promises of the said *(subscriber)* hereinafter stated, that he will pay to the said *(promoter)* or to any person or corporation to whom he may assign this agreement, on demand, the sum of _____ dollars, being the subscription price of _____ shares of the capital stock of the said corporation, or such part thereof as may be called for. The stock thus paid for to be delivered at the earliest possible moment after the organization of the company, and meanwhile proper receipts or scrip to be issued to the undersigned.

THIS AGREEMENT IS CONDITIONED upon the procuring by the said *(promoter)* of other bona fide subscriptions, aggregating in all not less than \$ _____, to the capital stock of the said corporation.

THE SAID *(promoter)* on his part, in consideration of the foregoing, promises to use his best endeavors to obtain such amount of subscriptions, and his best efforts to perfect the organization of the said corporation.

WITNESS OUR HANDS AND SEALS, this _____ day of _____, 189 _____

Form 2.

UNDERWRITERS' AGREEMENT.

Whereas, a certain Syndicate proposes to organize, under the laws of the State of New Jersey, a corporation, to be known as the _____ Company (or some other name satisfactory to such syndicate), herein called the corporation, the object of which corporation shall be, among other things, to manufacture, buy and sell _____ and _____

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kindred products, which corporation shall have a capital stock of
dollars, represented by shares, each of the par value
of one hundred dollars, and which capital stock shall consist of
dollars, evidenced by shares of per cent.
cumulative stock (preferred), and dollars, evidenced by
shares of common stock, and

Whereas, such Syndicate proposes that there shall, by proper instruments of transfer and conveyance, be sold, transferred and assigned to the corporation the real estate, now being used for manufacturing

and the buildings, appurtenances, easements, plants, machinery, fixtures, utensils, good-will, trade-rights and trade-marks now owned by the

and the Syndicate further proposes that there shall be furnished to the corporation, at the time of such sale and transfer to it, dollars for working capital; for all of which the Syndicate shall receive from and be paid by the corporation dollars of said preferred stock, full paid up and non-assessable, and dollars of said common stock, full paid up and non-assessable; it being the intention that

dollars of said preferred stock, and dollars of said common stock shall remain in the treasury of the corporation for further working capital and to acquire additional properties; and the Syndicate shall have the right to furnish additional plants, other than those above named, to the extent of dollars, at the purchase price thereof to the Syndicate, or shall have the right to furnish cash to the extent of dollars on the same basis as subscribers to this agreement; and

Whereas, the Syndicate shall be represented in the carrying out and enforcement of this contract by the Bank (herein called the Bank) of the City of , State of ; and which Bank shall be and is hereby given the right to enforce compliance with this agreement by the parties hereto; and whereas it is deemed desirable and as an aid to the organization of the corporation that said preferred stock shall be underwritten and guaranteed upon the terms and conditions herein contained; and

Whereas, the undersigned desire, upon the terms and conditions herein contained, each for himself, severally, and not jointly, to underwrite and guarantee the purchase of said preferred stock;

NOW, THEREFORE, it is hereby agreed by and between the undersigned, severally, of the one part and the Bank of the other part, as follows:

(1) The undersigned, each for himself, severally and not jointly and not for the others, do hereby agree to and do subscribe for and hereby agree to purchase so much of said preferred stock, at the par value thereof, as is set opposite their respective names, upon the terms and conditions herein contained, and hereby agree to pay the Bank the several amounts respectively set opposite their respective names, in cash, within ten days, as and when payment thereof shall be called for by the Bank, time to begin running from the date that the call for such payment is mailed by the

Bank. On all payments which are made to the Bank hereunder, the Bank shall issue and deliver its negotiable receipts, which receipts shall be exchanged by the Bank for the stock of said corporation when issued, in accordance with this agreement.

(2) With each share of said preferred stock, so subscribed for and agreed to be purchased and paid for by the undersigned, respectively, the undersigned, respectively, shall receive one full paid share of said common stock.

(3) Any person who is a stockholder in any of the aforementioned companies, the purchase of whose plants or properties is so contemplated by the corporation and who shall become a party to this agreement, may apply in payment of the stock so subscribed for by him so much of the purchase price to be paid to his respective company for the sale by such respective company of the property named in the preamble hereof as may be authorized by such company; such authorization and application of such payment, in manner aforesaid, shall be equivalent to the cash payment as specified in paragraph "(1)" hereof.

(4) Notwithstanding said preferred stock so to be paid to said Syndicate as aforesaid is limited to a total of

dollars, the same may be underwritten and the purchase thereof guaranteed to an extent in excess of

dollars, and in event of such excess, all the amounts subscribed and hereby guaranteed by the undersigned and the benefits accruing hereunder shall be proportionately abated and reduced. In no event, however, shall the total preferred stock of the corporation exceed

dollars. The Syndicate is hereby vested with the exclusive power of determining to what extent such excess of underwriting and guaranteeing of said preferred stock shall be permitted.

(5) This agreement shall not become obligatory upon any of the parties hereto until said preferred stock to the amount of

dollars is underwritten and subscribed for, according to the terms and provisions hereof; in which event this agreement shall be and become binding, operative and effective, and notice of the fact that this agreement has become so binding, operative and effective shall be mailed by the Bank to the undersigned.

(6) The right and power to enforce this agreement when the same has become binding, operative and effective, is hereby vested exclusively in the Bank, which alone shall have the right to enforce payment of the obligations assumed by the parties hereto.

(7) If any of the undersigned shall fail to complete their respective payments when called upon by the Bank, as herein provided, it shall be optional with the Bank to proceed to collect said amount remaining due, or to forfeit all payments thereof made hereunder by the party or parties in default, as fixed, specified and liquidated damages, and deprive the parties so in default of the right of any participation whatever in this agreement or in the benefits to be derived therefrom.

(8) In case, for any reason whatever, before or after this agreement

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has become binding, operative and effective, the Syndicate shall determine to abandon said project and the organization of the corporation and shall so declare to the Bank, then this agreement, in all its parts, including the obligation to deliver said preferred stock or any of said common stock, shall be and become forthwith inoperative.

(9) Separate copies of this agreement may be executed with the same force and effect as if all the signatures to said separate copies were appended to one original agreement, and it is hereby expressly understood and agreed that the Syndicate shall have and is hereby given the exclusive right at its option at any time before any call is made hereunder, to substitute for the Bank any bank or trust company of New York City satisfactory to such Syndicate, and in case of such substitution, notice thereof shall be given to the undersigned and such substitution shall have the same force and effect as though such bank or trust company had been originally mentioned and designated in this agreement in lieu or place of the Bank herein specified, and in that event all the obligations of the undersigned created by this agreement shall inure, run to and be in favor of the bank or trust company so substituted.

Dated this day of , 1899.

NAME.	ADDRESSES.	NUMBER OF PREFERRED SHARES SUBSCRIBED FOR.

Form 3.**OPTION AGREEMENT.**

[SHORT FORM.]

The undersigned hereby agree in consideration of one dollar and other good and valuable considerations to sell to , or his assigns, as a going concern, the business carried on by the undersigned, including the property, machinery, materials, supplies used in connection with the business, and also the good-will, trade-rights, trade-marks, brands, patents, inventions, formulæ, receipts, trade-names and patterns owned or controlled by the undersigned, excepting only money in bank and bills and accounts receivable, which are to be and remain the property of the undersigned. All said property to be at the time of such sale free and clear of all liens, charges, encumbrances, taxes and assessments. The consideration for the said sale to be \$ in addition to inventory value of stock on hand at the time of transfer.

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This option shall expire on the 1st day of _____, 1899, unless the said _____, or his assigns, shall before that time give notice in writing of his acceptance thereof, in which case the transaction is to be completed and the property delivered within four months thereafter, or earlier at the option of _____.

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It is understood and agreed that in accepting this option _____ assumes no responsibility or liability to purchase the said property unless _____, or his assigns, shall elect so to do by written notice, and that in case of assignment that this instrument and all of its parts and provisions shall inure to the benefit and run in favor of, and be obligatory upon, such transferee, and _____ shall be free from liability therein and thereunder to the same purport and effect as though such transferee had originally been made the purchaser hereto.

WITNESS our hands and seals this _____ day of _____ 1899.

Form 4.

OPTION AGREEMENT.

AGREEMENT, made at the City of New York this _____ day of _____, 1899, between the _____ COM-PANY (hereinafter referred to as the Vendor) and the stockholders thereof (hereinafter referred to as the Stockholders), by whom and on whose behalf this instrument shall be signed, of the one part, and

(hereinafter referred to as the Purchasers), their nominees or assigns, of the other part, the said Company being organized under the laws of the State of _____, with a capital stock outstanding of \$ _____, divided into _____ shares of \$ _____ each.

WHEREAS, the Purchasers propose to form a corporation under the laws of the State of New Jersey (or other suitable State), to be called The _____ Company (or other suitable name) (and hereinafter referred to as the Company), with a capital stock of about _____ million dollars (_____), divided into shares of one hundred dollars (\$100) each, of which part shall be seven per cent. (7%) cumulative preferred shares (preferential as to capital as well as to dividend), and part common shares. The exact amount of such capital stock, more or less than _____ millions, and the proportions of said preferred and common shares into which the same shall be divided shall be as approved by one or more responsible bankers in the City of New York as sufficient for the acquisition of the _____ busi-nesses taken over by said Company, and for the satisfaction of expenses

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and commissions connected therewith and with the formation and establishment of said Company, and for providing the Company with such working capital in cash or such reserve of treasury stock as may also be so approved. No preferred stock shall be issued except in payment for plants, and for cash (necessary for working capital as aforesaid) to an amount equivalent to the preferred stock issued therefor.

THIS AGREEMENT WITNESSETH, that for and in consideration of one dollar in hand paid by the Purchasers—

FIRST.—The Vendor hereby sells to the Purchasers the sole option until the 1st day of October, 1899, of purchasing for the sum of _____ dollars the entire good-will, plants, patents, trade-marks, and all visible and tangible real and personal property of said company, not including cash and bills and accounts receivable.

SECOND.—If said option is exercised, the sale may be completed on or before the 1st day of _____, 1899 (hereinafter called the time of transfer), but the directors for the time being of the Company may extend said last named date to a further period, not exceeding one month, and said sale shall take effect as from the date hereof, and no dividend shall be paid or declared, or any property whatsoever withdrawn from the Company, save in the ordinary course of business, between said date and the time of transfer.

THIRD.—The real and personal property, assets and business of the Company shall, at the time of transfer, be free and clear of all liens, mortgages, judgments, debts and other liabilities whatsoever, except engagements under current and ordinary business, contracts taken over by the Purchasers, and the Vendor and the Stockholders may retain the cash on hand or in bank, book accounts and bills receivable of the company as they shall exist on the date hereof, for the satisfaction of any such encumbrances as aforesaid, and after that for their own use.

The purchasers shall, however, have the right to retain and hold from the purchase consideration such part thereof as in their judgment shall be necessary to discharge any such liens, mortgages, judgments, debts or other such liabilities as may exist at the time of the transfer.

FOURTH.—The Vendor and Stockholders shall, upon ten days' notice in writing given by the Purchasers to the Vendor, deliver to such responsible trust company in the City of New York (hereinafter referred to as the Trust Company) as shall be named by the Purchasers, the certificates for the number of shares of stock in the company set opposite the names of the Stockholders at the foot hereof, together with transfers thereof duly executed or signed in blank, and also an abstract or abstracts and searches of title to all the real property of the Company wheresoever situate, duly searched to date and showing all incumbrances, by lawyers of responsibility and standing, or by title guarantee companies, and full and sufficient deeds, bills of sale, assignments, and all such other convey-

ances, as shall be usual, necessary or proper for the conveying and assuring to the Purchasers, or their assigns, all the assets of the Company set forth in the paragraph hereof numbered "I," executed by the proper officers of the Company, and with sufficient and proper stamps, and certificates affixed in such form as to entitle such of them as are usually recorded to be recorded in the usual and proper offices, and all such conveyances shall contain the usual covenants that the property so conveyed is free from incumbrances as herein provided.

All the foregoing are to be held by the Trust Company until the time of transfer or the expiration unaccepted of this option, and the Trust Company shall deliver separate receipts for said stock and for said abstracts and conveyances, and while the said abstracts remain on deposit with the trust company, no transfer of the real property of the company, or any part thereof, shall be made by it.

FIFTH.—At the time of transfer the search and certificate thereof above mentioned shall be continued by the Vendor to such time, and thereupon the purchase consideration may be paid by the Purchasers to the Vendor at the office of the Trust Company, and such payment shall be in full of the purchase obligations of the Purchasers hereunder. And upon said payment the said certificates of stock and blank transfers, abstracts and certificates of search or such of them as the purchasers may elect, shall be forthwith handed over to the Purchasers by the Trust Company, and the Vendor and Stockholders hereby jointly and severally covenant to do anything further which may be necessary on their part to complete the sale and to execute such legal covenants for ten years, and in such form as the purchasers may require, and not to engage in any way in the manufacture of _____ or other like articles within ten years from date hereof without the consent of the purchasers.

SIXTH.—If the Purchasers fail to exercise the option, the Trust Company shall return to the Vendor the said certificates and blank transfers and abstracts and instruments, and the Purchasers shall pay all the charges of the Trust Company in connection with the matters aforesaid, and such trust company shall have no claim or lien whatsoever upon said certificates or abstracts or instruments or upon the Vendor for any of its said charge.

SEVENTH.—If said option is exercised, the Vendor shall take and accept in full payment for the property hereby agreed to be conveyed:

In such preferred stock of such	Company \$
In such common stock of such	Company \$

It is, however, distinctly understood that in case the Purchasers shall accept the stock so deposited, the cash in hand, credits and other property retained and not covered by this option, as well as the consideration above named, shall inure solely to the benefit of the Stockholders so depositing their stock, and not to the Purchasers or their assigns; subject, however, to the payment of all liabilities.

**Form
5**

EIGHTH.—We, the undersigned Stockholders, owning respectively the number of shares of stock of said Company set opposite our several signatures, and no other, do hereby consent to and approve, ratify and confirm the proposed sale of the property, business and good-will of said Company on the terms and conditions above set forth.

IN WITNESS WHEREOF, the Vendor and Stockholders have hereunto set their hands the day and year first above written.

SIGNATURE OF VENDOR AND STOCKHOLDERS.	RESIDENCE.	SHARES OF STOCK NOW HELD IN COMPANY.

I, _____, Secretary of the Company, hereby certify that the foregoing consent of stockholders is signed by the holders of all the capital stock of said _____ Company.

WITNESS my hand and corporate seal of said Company this _____ day of _____, 1899.

[SEAL.]

Secretary.

Form 5.**OPTION AGREEMENT.**

THIS AGREEMENT, made at _____, this _____ day of _____, 1899, by and between _____, a corporation organized and doing business under and by virtue of the laws of the State of _____, first party hereto, and _____ of _____, the second party hereto, WITNESSETH,

FIRST.—For and in consideration of ten dollars (\$10), and other good and valuable considerations by the second party to the first party in hand paid, the receipt of which by the first party is hereby acknowledged, the first party hereby agrees, upon the request of the second party, provided such request be made to the first party on or before _____, 1899, to sell, convey, transfer, and deliver to the second party the following:

All of the real estate, buildings, improvements, appurtenances, easements, plant, machinery, fixed and movable, now belonging to the first party and located at _____, in the County of _____, and State of _____; also all the railroad tracks, furnaces, brick-work, foundations, boilers, pumps, water heaters, engines, housings, chilled rolls, shears, cranes, annealing boxes and stands, castings, buggies, trucks, steam, gas and water pipes, water and acid tanks,

storage tanks, spare parts of machinery, electric plant, cars, shafting, belting, pulleys, hangers, gears, tools, forges, horses, wagons, implements and utensils of every nature whatsoever, located on or within the above described premises, or any property of the character described above belonging to the party of the first part which may be temporarily located elsewhere than on the above described premises, or for the purpose of making repairs, or for any other reason; intending hereby to include all property, machinery, material and supplies now being used for, or suitable to be used for or in connection with the manufacture and shipment of _____, excepting the goods, material and supplies hereinafter mentioned; also all of the good-will, trade-rights, trade-marks, brands, patents, inventions, formulas, and recipes, trade-names and patents now owned or controlled by the first party. All of the foregoing property at the time of such sale to be free and clear from all liens, charges, incumbrances, taxes and assessments whatever.

The first party shall and will within ten (10) days after notice to that effect, furnish and deliver to the second party for examination by its counsel, full and complete abstracts of title to the said real estate.

SECOND.—The second party shall have and is hereby given the exclusive right and option to purchase of the first party all of the foregoing property on or before _____ 1899, for the consideration of _____ dollars, cash, to be paid by the second party to the first party at the time of the consummation of such purchase.

THIRD.—If, during the period of this contract, any part of the property hereinbefore described shall be destroyed or damaged by fire or other casualty, then and in that event, unless the property so destroyed or damaged shall be fully restored, on or before the _____ day of _____ 1899, to the condition in which it was immediately preceding such destruction or damage, then to the extent of the loss resulting from such injury, the purchase price hereinbefore specified shall be abated. The extent of such loss, in case the parties hereto cannot agree upon the same, shall be ascertained and determined by appraisers in the manner hereinafter provided.

FOURTH.—At the time of the consummation of the sale and purchase of the property hereinbefore described, the first party hereby agrees to sell and deliver, and the second party hereby agrees to purchase of the first party, in addition to the foregoing, the following:

(a) All of the [*manufactured product described in detail*], then owned by the party of the first part, the price to be paid therefor to be the then market value thereof.

(b) All of the following described goods, materials and supplies located upon or within the above described premises, or in transit to the same, at their cost price to the party of the first part, to wit:

[*Crude materials described in detail.*]

(c) All unexpired fire, liability and other insurance policies then in force, at the *pro rata* value of the same.

**Form
5**

The price to be paid for the property specified in this paragraph shall be paid in cash contemporaneously with the payment of the sum specified in paragraph "Second" hereof.

FIFTH.—In case of the consummation of the purchase of the property covered by this contract, then contemporaneously therewith the second party shall assume all bona fide contracts made by the first party for the purchase or sale of materials, raw or manufactured.

SIXTH.—In case of the purchase of the property covered by this contract, then contemporaneously therewith the first party shall cause to be properly executed by itself and by all of its officers, a contract or contracts with the second party, by which the first party and such officers shall obligate themselves for a period of fifteen years after the consummation of such purchase, not to engage or be or become interested, directly or indirectly, as individuals, partners, stockholders, directors, officers, clerks, agents or employees in the business (other than that of transferee hereunder, of the second party) of buying, manufacturing or selling

or any kindred products or any of the by-products of a
factory, within a radius of _____ miles of the City of

SEVENTH.—The first party hereby agrees in case of the consummation of the purchase of the property embraced in this contract, that it will forthwith, upon demand of the second party, execute or cause to be executed by the first party and all its officers such further instrument or instruments as may be required by the second party for the purpose of carrying out the purposes and provisions of this agreement.

EIGHTH.—In case any difference of opinion shall arise by and between the parties hereto in the interpretation and carrying out of this instrument, or any of its provisions, then and in that event such difference shall be determined by three appraisers; each of the parties hereto to appoint one appraiser and the other two so chosen to select a third appraiser. The award of a majority of such appraisers shall be binding and conclusive upon the parties hereto; that appointment of such appraisers by the respective parties hereto shall be made by each of said parties within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the parties hereto to appoint such appraiser shall authorize the other of said parties to make an appointment for the one so in default. The two appraisers chosen shall select a third appraiser within five days after the appointment of the first two appraisers. If the first two appraisers fail or are unable to, within the time hereinbefore specified, select a third appraiser, then any judge of any court of record in _____ County, upon application made by either of the parties hereto for the purpose, is hereby authorized and empowered to appoint such third appraiser. The

award to be made by the appraisers hereunder shall be made within fourteen days of the appointment of the third appraiser.

**Form
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NINTH.—It is expressly understood and agreed that this instrument may be transferred and assigned by the second party, and that when so transferred and assigned, this instrument and all of its parts and provisions shall inure to the benefit and shall run in favor of and be obligatory upon such transferee, to the same purport and effect as though such transferee had originally been made the second party hereto. In case of such transfer and assignment by the second party, all of its rights, as well as obligations hereunder, whatever the same may be, shall forthwith cease and terminate.

IN WITNESS WHEREOF, the party of the first part has duly caused this instrument to be signed and sealed by its proper officers and attested under its corporate seal, the day, date and place first above written.

THE CERTIFICATE OF INCORPORATION.

Form 6.

[Section 8, p. 16, *ante.*]

SKELETON FORM OF CERTIFICATE.

THIS IS TO CERTIFY, That the undersigned do hereby associate themselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names.

FIRST.—The name of the corporation is (*Name in full.*)

SECOND.—The location of the principal office in this state is at No. _____ street, in the _____ of _____ county of _____

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is _____

THIRD.—The objects for which this corporation is formed are (*State objects in detail; see forms 9-85. Add selection of general clauses suitable in connection therewith; see forms 86-104.*)

The corporation shall have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in the State of New Jersey, and as well in all other states, and in all foreign countries, and especially in _____

**Form
7**

FOURTH.—The total authorized capital stock of this corporation is _____ dollars, divided into _____ shares of the par value of _____ dollars each.

(If more than one class of stock insert preference clauses; see forms 105-120.)

FIFTH.—The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which the company will commence business, are as follows: [*The capital stock with which the company will commence business should not be more than two-thirds preferred stock. See section 18, p. 33, ante.*]

NAME.	POST-OFFICE ADDRESS.	NUMBER OF SHARES.

SIXTH.—(*Insert clauses for the regulation of the business and for the conduct of the affairs of the corporation, and creating, defining, limiting and regulating the powers of the directors and the stockholders, or any class or classes of stockholders; see forms 121-144.*)

SEVENTH.—(*If the duration of the company is limited add*): The period of existence of this company is limited to _____ years.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day of _____, A. D. eighteen hundred and ninety-
Signed, sealed and delivered }
in the presence of }

(Attach and cancel 10-cent internal revenue stamp.)

Form 7.

[Section 9, pp. 22-3, *ante.*]

ACKNOWLEDGMENT.

STATE OF _____ } ss.:
COUNTY OF _____ }

BE IT REMEMBERED, That on this _____ day of _____, A. D. eighteen hundred and ninety-_____ before me, a _____, personally appeared _____, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof,

they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

**Forms
8-10**

(*Attach and cancel 10-cent internal revenue stamp to each certificate of acknowledgment.*)

Form 8.

[Section 9, pp. 22-3, *ante.*]

PROOF BY SUBSCRIBING WITNESS.

STATE OF
COUNTY OF

} ss.:

BE IT REMEMBERED, That on the day of , A. D. eighteen hundred and ninety- , before me, the subscriber, personally appeared , who, being by me duly sworn, on his oath did depose and say, that he saw (*insert names of incorporators*), the persons named in the foregoing certificate, sign, seal and deliver the same as their voluntary act and deed, and that the deponent at the same time subscribed his name thereto as a witness of the execution thereof.

Subscribed and sworn to before me }
the day and year aforesaid. }

If acknowledgment is taken or proof is made before an officer (other than a master in chancery or commissioner of deeds for New Jersey) outside of New Jersey add certificate (pp. 23, 144, *ante*).

Execute one copy. Affix proper internal revenue stamps.

Record in the office of the clerk of the county in which the registered office is located. Then file in the office of the secretary of state at Trenton. (Section 9, pp. 22-3, *ante.*)

OBJECT CLAUSES FOR SPECIFIC COMPANIES.

Form 9.

ACQUISITION OF EXISTING BUSINESS.

To acquire and take over as a going concern the business now carried on at No. Street, , under the style or firm of A. B. & Co., and all or any of the assets and liabilities of the proprietors of that business in connection therewith.

Form 10.

ADVERTISING.

To carry on a general advertising business in all its branches both as principals and agents; to carry on the businesses of printers, stationers, engravers, bookbinders, designers, dealers in paper and all fancy articles, booksellers, publishers, advertising agents, buyers and sellers of newspapers and publications of all kinds, and dealers in any other articles or things of a character similar or analogous to the foregoing or any of them, or connected therewith; and in general to undertake and transact all kinds of agency business which an individual may legally undertake; to buy, sell and deal in tickets for theatres and all other places of amusement or entertainment.

**Forms
11-13****Form 11.****AIR POWER.**

To manufacture, buy, sell, and deal in air compressors, electrical machines and apparatus, locomotives, engines, trucks and cars, and all machinery for the acquisition or use of power of any kind, and the erection of buildings for housing the same, and equipping and installing manufacturing plants generally, including the acquisition, by purchase, by manufacture or otherwise, of all materials, supplies, machinery and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

Form 12.**AUTOMOBILES.**

To carry on the business of truckmen, draymen, mechanical engineers and manufacturers, and workers and dealers in motive power, and any business in which the application of compressed air, electricity, or any power, like or otherwise, is or may be useful or convenient, or any other business of a like nature, and to do the business of common carriers, of persons, freight, express and property of all kinds, and, either as principals or agents, to trade and deal in, and deal with any article belonging to any such business, and all apparatus, appliances, and things used in connection therewith, or with any invention or patents; to produce and accumulate compressed air, electricity, and electro-motive force, or other agents, similar or otherwise, and to supply the same for the production, transmission or use of power for any and all purposes, and uses as may be thought advisable, and to manufacture, buy, sell, hire, lease, let and deal in air compressors, in electrical machines and apparatus, trucks and cars, and all machinery for the use of power of all kinds, and to obtain, accept and use, all permits and all franchises, municipal or otherwise; to acquire and carry on works, buildings and structures of all kinds, relating to any business of the company, and to enter into such contracts, and make such arrangements as may be necessary to carry out the same.

Form 13.**BAKING POWDER.**

The objects for which the corporation is formed are manufacturing, buying, selling, importing, exporting, refining and dealing in baking powders, argals, cream of tartar, tartaric acid, and all other chemicals which are or may be component parts of baking powder, or may be conveniently produced or dealt in in connection therewith, and generally to carry on any manufacturing or other business which can conveniently be carried on in conjunction with any of the matters aforesaid, or in or upon the premises of the company.

Form 14.**BICYCLES.**

The objects for which the corporation is formed are as follows, to wit: the manufacture and selling of bicycles and all parts and accessories thereof and the carrying on of any trade or business incident thereto or connected therewith; the manufacturing and selling of automobile vehicles and electric and other motors, and the carrying on of any trade or business incident thereto or connected therewith; the carrying on of any manufacturing or mercantile business lawful in the place where such business shall be carried on.

Form 15.**BICYCLE SADDLES AND SUNDRIES.**

To manufacture, buy, sell, deal in and deal with bicycle saddles, bicycle parts and bicycle appurtenances of all kinds, and to acquire by purchase, manufacture or otherwise all materials, supplies and other articles manufactured or unmanufactured, and all real and personal property necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof, and to sell and dispose of the same.

Form 16.**BISCUIT COMPANY.**

To manufacture, buy, sell and export biscuits, crackers, cakes, Italian paste, confectionery and other food products, and to acquire and dispose of shares of the capital stock of other corporations organized in this state, or elsewhere, for similar purposes or purposes incidental thereto, and to do and transact all lawful business incidental to all or any of the above-mentioned objects.

Form 17.**BREWERY.**

The objects for which the corporation is formed are the manufacturing, selling and dealing in beer, the manufacturing, growing, selling and dealing in malt and hops, commodities, articles and things necessary or convenient for use in the business of brewers and maltsters, and the business incidental thereto.

Form 18.**BUILDING CONTRACTORS.**

To make, enter into, perform and carry out contracts for constructing, altering, decorating, maintaining, furnishing, fitting up and improving buildings of every sort and kind; to advance money to and

Forms 19-22 enter into contracts and arrangements of all kinds with builders, property owners and others; to carry on in all their respective branches the businesses of builders, contractors, decorators, dealers in stone, brick, timber, hardware, and other building materials or requisites; to purchase for investment or resale, and to sell houses, lands, real property of all kinds and any interest therein, and generally to deal in, sell, lease, exchange or otherwise deal with lands, buildings and any other property, whether real or personal.

Form 19.

BUILDING MATERIALS.

To manufacture, buy, sell, deal and trade in any and every kind of bricks, stone, and building materials and supplies; to transport bricks, building materials, goods and merchandise by land or water, and for that purpose to purchase, own or charter, and operate, steam boats, steam tugs, barges and other boats.

Form 20.

CEMENT.

To manufacture, sell and deal in Portland cement, and all kinds of natural and other cement, lime, limestone, calcined and other plasters and artificial stone, and to erect, or acquire by purchase, lease or otherwise, manufactories, kilns and buildings; to establish and maintain and operate manufactories, kilns, warehouses, agencies and depots for manufacturing and storing its cement and other products, and for their sale and distribution, and to transport, or cause the same to be transported, as articles of commerce, and to do any and all things incidental thereto and necessary and proper to be done in connection with the business of trading and manufacturing as aforesaid.

Form 21.

CHEMICALS.

To manufacture, buy, sell, deal in and use alkalies and chemicals of all kinds and all articles and things used in the manufacture, maintenance and working thereof, and also all apparatus and implements and things for use either alone or in connection with products of which they are ingredients or in the manufacture of which they are a factor.

Form 22.

CORDAGE.

The objects for which said company is formed are as follows, viz.: The manufacture and sale of cordage and binder twine, and any and all similar commodities, including the acquisition by purchase, manufacture

or cultivation of all materials, supplies, machinery and other articles necessary or convenient for use in connection with and in carrying on the business of manufacture and sales as aforesaid; the taking, acquisition, buying, holding, owning, selling, leasing, mortgaging, improving, cultivating and otherwise dealing in and disposing of real estate, manufacturing, buildings and improvements necessary or convenient in carrying on said business.

**Forms
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Form 23.

COTTON COMPANY.

The objects for which the company is formed are the buying of seed cotton, the ginning and cleaning of same, both cotton and seed, the baling of cotton by mechanical process, the manufacture of machinery for the purposes named and all business connected with and collateral thereto, including the selling, shipping and warehousing of the products.

Form 24.

COTTON COMPRESS.

To manufacture, to operate and to sell, machinery for compressing cotton or other fibrous or other materials; to manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description.

Form 25.

COTTON OIL.

To carry on the trade or business of buying, selling, ginning, baling, adapting, preparing and otherwise dealing in seed cotton and any and all other kinds of cotton, and manufacturing, refining, producing, adapting, preparing, buying and selling, and otherwise dealing in cotton oil and other oils, and buying, selling and otherwise dealing in cotton seed, and manufacturing, producing, adapting, preparing, buying and selling, and otherwise dealing in any and all the products derived from cotton seed, and utilizing any and all products and by-products derived from the operations of the plants of said corporation in such manner as may be advantageous or profitable, including the buying, selling, fattening and dealing in cattle; and also to manufacture, produce, purchase, adapt, prepare, use, sell or otherwise deal in any materials, articles or things required for, in connection with, or incidental to, any of the purposes above mentioned.

Form 26.

DEPARTMENT STORE.

- (1) To establish and conduct a general department store.
- (2) To carry on all or any of the businesses of dry goods merchants,

**Form
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cloth manufacturers, furriers, haberdashers, hosiers; manufacturers, importers, wholesale and retail dealers of and in textile fabrics of all kinds; milliners, dressmakers, mantua-makers, tailors, hatters, clothiers, furnisners, outfitters, glovers, lace manufacturers, feather dressers, boot and shoe makers; manufacturers and importers and wholesale and retail dealers of and in leather goods, household furniture, ironmongery, china and glassware, crockery and other household fittings and utensils, ornaments, bric-à-brac, stationery, notions and fancy goods; dealers in meats and provisions, drugs, chemicals, and other articles and commodities of personal and household use and consumption; and generally of and in all manufactured goods, materials, provisions and produce.

(3) To carry on any of the businesses of coach and carriage builders, saddlers, harness-makers, house decorators, sanitary engineers, electrical engineers, and contractors in all the branches thereof; gas-fitters, coal and wood dealers, land, estate, and house agents, builders, contractors, auctioneers, cabinet-makers, upholsterers, furniture removers, owners of depositories, warehousemen, carriers, storekeepers; manufacturers of and dealers in hardware, jewelry, plated goods, perfumery, soap, toilet articles of all kinds, and articles required for ornament, recreation or amusement; gold and silver smiths, dealers in precious stones, watch-makers, newspaper proprietors, booksellers, dealers in musical instruments, manufacturers of and dealers in bicycles, tricycles and motor carriages, and sporting goods of all kinds; and also refreshment contractors, restaurant keepers, wine and liquor dealers, tobaccoists, and dealers in mineral, aerated, and other liquors; barbers and hairdressers; farmers, dairymen, market gardeners, nurserymen and florists; photographers and dealers in photographic supplies, printers, lithographers and engravers; dealers in domestic, trained and fancy animals.

(4) To buy, sell, manufacture, repair, alter and exchange, let on hire, export, and deal in all kinds of articles and things which may be required for the purposes of any of the said businesses, or commonly supplied or dealt in by persons engaged in any such businesses, or which may seem capable of being profitably dealt with in connection with any of the said businesses.

(5) To provide and conduct refreshment-rooms, newspaper-rooms reading and writing rooms, dressing-rooms, telephones, and other conveniences for the use of customers and others.

(6) To grant to other persons or corporations the right or privilege to carry on any kind of business on the premises of the company on such terms as the company shall deem expedient or proper.

Form 27.**DISTILLERS.**

To manufacture, buy, sell, deal in, distribute, store, warehouse and export whisky of all kinds, high wines, alcohol, spirits and gins of all kinds, and all kinds of distillery products and by-products thereof; to carry on the general business of distilling, redistilling and rectifying

high wines, spirits and alcohol, and of compounding and blending of gins and whiskies of all kinds; to manufacture, buy, sell, deal in, store, warehouse, distribute and export grain, molasses and all articles used in connection with the operation of a distillery, and to manufacture, buy, sell, deal in, distribute, store, warehouse and export all products or by-products of such articles; to do a general warehouse and storage business; to do a general cooperage business; to issue, register, certify and guarantee warehouse receipts; to feed cattle; to carry or transport or cause to be carried or transported any of the property above referred to.

**Forms
28-29**

Form 28.

DRY GOODS.

The business, both wholesale and retail, of general dry goods merchants, drapers, haberdashers, milliners, dressmakers, tailors, furriers, lace-men, clothiers, hosiers, gloves and general outfitters.

Form 29.

ELECTRIC.

To carry on the business of electricians, mechanical engineers and manufacturers, and workers and dealers in electricity, motive power, heat and light, and any business in which the application of electricity or any power, like or otherwise, is or may be useful, convenient or ornamental, or any other business of a like nature, and to manufacture and produce, and, either as principals or agents, trade and deal in and deal with any article belonging to any such business, and all apparatus, appliances and things used in connection therewith, or with any inventions or patents; to produce and accumulate electricity and electro-motive force, or other agency, similar or otherwise, and to supply the same for the production, transmission or use of power for lighting, heating and motive purposes or otherwise, as may be thought advisable, and to light streets, places and buildings, public or private, by means of electricity, or otherwise, or to enable the same so to be lighted; to construct, maintain and operate works, for the supply and distribution of electricity for light, heat and power; to carry on the business of suppliers of light, heat and power and carriers of passengers and goods by land and by water in all its branches; to acquire by purchase or otherwise, maintain, equip, operate and build street and other railways operated by electricity or otherwise; to use or manufacture, operate and equip telephones, telegraphs, phonographs and all electrical apparatus now known, or that may hereafter be invented, including all wires or appliances for connecting electric apparatus at a distance with other electric apparatus, and including the formation of electric exchanges or centres; to acquire, by purchase or otherwise, and to use, operate and equip subways, conduits and ducts, and to obtain, accept and use all permits and also franchises, municipal or other-

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wise; to purchase or otherwise acquire and to sell, work or otherwise deal with land, water, water-power, water-power supplies and water-power work and equipment, or works; to undertake, construct, acquire and carry on works of all kinds relating to any business of the company, and to enter into such contracts and make such arrangements as may be necessary to carry out the same.

To carry on the business of an electric light company in all its branches, and to construct, lay down, establish, fix and carry out all necessary cables, wires, lines, accumulators, lamps and works, appurtenances and appliances.

Form 30.**ELECTRICAL MACHINERY.**

To carry on the business of manufacturers and dealers in electric motors, dynamos and other electrical machinery, appliances and plants, and to buy, sell, manufacture, repair, convert, alter, let or hire, and deal in electrical appliances and goods of every kind and character, and machinery of all manner or kind;

To produce and accumulate electricity and electro-motive force, and to supply the same for the production, transmission or use of power for lighting, heating and motive purposes or otherwise, as may be thought advisable, and to light streets, places and buildings, public or private, by means of electricity or otherwise, or to enable the same to be so lighted.

Form 31.**ELECTRIC LIGHTING.**

To manufacture, generate, buy, sell, accumulate, store, transmit, furnish and distribute electric current for light, heat and power;

To manufacture, buy, sell, lease, let or operate any or all machinery or appliances for the manufacture, generation, storage, accumulation, transmission or distribution of any or all types of electric current, and any or all manner of electric machinery, apparatus or supplies of any nature or kind whatsoever;

To erect, buy, sell, operate, lease and let power plants and generating stations for the manufacture, generation, accumulation, storage, transmission and distribution of electric current and any or all machinery used therein or in connection therewith;

To manufacture, buy, sell, lease and let fixtures, chandeliers, electroliers, brackets, lamps, globes, and other supplies and appurtenances used for or in connection with the manufacture, generation, accumulation, storage, transmission, distribution or use of electric current for light, heat, or power, or otherwise, and to carry on a general business of electricians, mechanical engineers, suppliers of electricity for the purpose of light, heat or power or otherwise, and install, erect and operate, sell or

lease wires, cables and fixtures, both interior and exterior, for the transmission and use of electric current; and to manufacture and deal in all apparatus and things required for or capable of being used in connection with the generation, distribution, supply, accumulation and employment of electricity;

To buy, sell, operate or lease pole lines, erect poles, string wires thereon, or on poles of other individuals or corporations, on any and all streets, avenues, highways and roads of counties, townships, towns, villages and cities, and over or under all canals and other waterways, and across any and all bridges, and to use the same either for the transmission of electric current for delivery to consumers on such lines or for transmission of current to independent vendors thereof, and to sell or lease to other individuals or corporations the right to string electric wires on or attach electric wires to any or all poles so erected, owned or leased, and to use such lines both as through lines and for local delivery;

To build and construct and use, for any of the purposes stated above, underground subways or conduits in such streets, avenues, highways and roads, and under such canals and other waterways, and string electric wires or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation the right to string and to use as aforesaid electric wires or conductors in any such subways.

Form 32.

ELECTRIC RAILWAY, LIGHTING, &c.

In the West Indian Islands to generate, accumulate, distribute and supply electricity for light, heat, power and signalling and other purposes; to construct, own and operate lines for the conveyance of electric current for telegraph, telephone, cable and other purposes; to construct, own and operate electric telephone exchanges; to manufacture and supply gas for fuel and illuminating purposes; to light cities, towns, villages, buildings and places both public and private, by gas or electricity; to make, own, sell or lease all machines, instruments, apparatus and other equipments necessary for the generation, distribution, accumulation and employment of gas and electricity or either of them for any purposes; and generally to manufacture, use and sell gas and electricity or either of them for any and all lawful purposes; to construct whatever works and do whatever may be necessary for the utilization and disposition of the by-products resulting from the operation of such works; to acquire, own, manage and convey real estate, mineral water, timber and oil properties and rights therein, and dealing in same, manufactured or unmanufactured, and to carry on the business of mining, smelting and refining and coke manufacturing; to build, own and operate and convey reservoirs and sewage, drainage, sanitary, water and all other public or private works; to acquire lands and to erect buildings and machinery necessary for the creation, transmission and utilization of power of any kind; in the West Indian Islands or elsewhere, to build, purchase or otherwise acquire steamships

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or vessels of any other class; to establish and maintain lines of steamships or other vessels of any class and to enter into contracts for the carriage of passengers, mail and goods, to and from and in the West Indian Islands, either by its own vessels, railways and conveyances or on the vessels, railways and conveyances of others; to construct, acquire, improve, develop, operate and manage steam, electric or other kinds of railways in said Islands, wharves, piers, docks, warehouses, harbors, canals, dams, tunnels, bridges, viaducts, subways and conduits, pipelines and other buildings or works capable of being advantageously used in the transportation or care of freight or passengers, or the laying of cables, wires, pipes, etc., to construct, maintain and operate pneumatic tubes and other devices for the transmission and delivery of mails and parcels; to carry on the business of railway contractors, ship owners, engineers, manufacturers of locomotives, cars and machinery; to construct, own and operate steam plants for heating, furnishing power and other purposes; to manufacture, sell and distribute ice or refrigeration.

Form 33.**ELECTRIC VEHICLES.**

To acquire by purchase, lease or otherwise, and to manufacture and construct vehicles of every and any kind or character used or useful as a means of conveying, delivering, moving, carrying and transporting persons, goods, chattels, products, substances and property of any and every kind and character and equip and install the same for use and operation by electricity, compressed air, oil, gas or any other means of motive power, either singly or in combination thereof and to operate, use, sell, lease and hire the same and to contract with corporations, firms, associations or individuals for operating, using, selling, leasing and hiring the same; to manufacture, purchase, own, lease, hire, erect, construct, equip, install, use, sell and dispose of all machines, compressors, generators, storage batteries, pumps, motors, structures, primary and secondary batteries, apparatus, instruments, fixtures and appliances for the manufacture, production, generation, distribution, use, supply and application of electricity, compressed air, oil, gas or other motive power, either singly or in combination thereof, or any or either of them, or any part or parts thereof.

Form 34.**ELEVATORS.**

1. To manufacture, erect, build, furnish, equip, construct, repair, maintain, operate, buy, sell, and in general to utilize and deal in and deal with elevators and all kinds of hoisting machinery, including the acquisition by purchase, manufacture or otherwise of all materials, supplies, machinery and other articles necessary or convenient for use in connec-

tion with and in carrying on the business herein mentioned or any part thereof.

2. To manufacture, purchase or otherwise acquire, hold, own, mortgage, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description, including any and all kinds of engines, dynamos, generators, pumps, and any and all kinds of machinery, any and all kinds of implements or articles of manufacture, and any and all kinds of mechanical apparatus.

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Form 35.

ENAMELED AND STAMPED WARE.

To carry on the business of mining, smelting, casting, forging, rolling, tinning, galvanizing, enameling, coating and plating of metals, and of manufacturing, buying, selling, dealing in and contracting for the manufacture, sale, purchase and exchange of sheet metal and of articles made wholly or partly therefrom, enameled wares on sheet and other metals; kitchen and household wares and ornaments made from and upon metal of any and every kind; household furniture and furnishings, consisting of enameled, stamped, galvanized and other wares on iron, steel, tin or any other metal or substance and all articles made of or upon metal or other substance, including crockery, china, pottery and glassware, and to mine, manufacture, buy, sell and generally deal in all materials used in the manufacture of any of the above-described wares or in any business similar thereto or connected therewith.

Form 36.

ENGINEERING.

To design, construct, enlarge, extend, repair, complete, take down and remove, or otherwise engage in any work upon bridges, piers, docks, foundations, mines, shafts, tunnels, wells, water works, lighthouses, buildings, railroads, canals and all kinds of excavation and iron, wood, masonry and earth construction in all parts of the world, and to make, execute and take or receive any contracts or assignments of contracts therefor or relating thereto or connected therewith, and to receive in payment therefor cash or stock, bonds or other securities of any corporation with which such contracts may be made, and any and all other property of any sort whatsoever, and to hold or sell the same, and to subscribe to the capital stock or bonds of any such corporation.

Form 37.

FARM PRODUCTS.

To produce, purchase, sell and deal in butter, cheese, eggs, milk, vegetables, poultry and other food, farm and dairy products, and the various materials entering into or used in the production thereof.

**Forms
38-39****Form 38.****FARM AND DAIRY PRODUCTS.**

To manufacture, sell and otherwise deal in condensed, preserved and evaporated milk and all other manufactured forms of milk; to produce, purchase and sell fresh milk and all the products of milk; to manufacture, purchase and sell all food products; to raise, purchase and sell all garden, farm and dairy products; to raise, purchase, sell and otherwise deal in cattle and all other live stock; to manufacture, lease, purchase and sell all machinery tools, implements, apparatus and all other articles and appliances used in connection with all or any of the purposes aforesaid, or with selling and transporting the manufactured and other products of the Company; and to do any and all things connected with, or incidental to, the carrying on such business or any branch or part thereof.

Form 39.**FISHERIES.**

To acquire, purchase, run, hold, sell, lease and rent fishing licenses for pound nets, traps, weirs, set nets, fish wheels and other fixed appliances, and purse nets, drag seines and other seines, and movable appliances for catching or retaining fish;

To acquire, purchase, hold, sell, lease, and rent locations upon which to construct and maintain pound nets, traps, weirs, set nets, fish wheels and other appliances whether fixed or movable, for catching or retaining fish;

To acquire, purchase, run, hold, sell, lease, rent, maintain and operate all needful or convenient appliances for catching fish by any means whatever; and for holding, freezing, packing, salting, canning and otherwise preserving and delivering, selling and transacting business with reference to the same;

To acquire, purchase, catch, take, buy, hold, store, pack, preserve, sell, export, dispose of and distribute fish of all kinds; and to engage in the propagation of salmon and of other food fishes;

To engage generally in the fish business in the waters of Oregon, Washington, Alaska, the Pacific Ocean and other waters;

To slaughter beeves and other animals and to acquire, purchase, cure, store, pack, can, sell, distribute and dispose of meats, fruits and vegetables of all kinds;

To acquire, purchase, build, construct, maintain and operate cold storage and refrigerating plants, and to do a general cold storage and refrigerating business;

To do a general warehouse and storage business, and to issue, register, certify and guarantee warehouse receipts;

To acquire, purchase, own, maintain and operate steam, sailing and other vessels.

Form 40.

FLOUR.

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To purchase and sell grain and cereals of every kind and to manufacture, buy and sell flour and other food articles manufactured from grain or cereals, and to acquire by purchase, lease or otherwise and to own, sell, lease, mortgage, convey, improve and operate factories and elevators, buildings and manufactories for the production and storage of all kinds of goods that may be produced from or in conjunction with grain or cereals of any kind; to buy, sell, trade and deal in the products of said manufactories or factories and in said grains or cereals in any state of their product.

Form 41.

FREIGHT AGENTS.

General shipping and forwarding business, to wit: The receiving, handling, shipping, forwarding and transporting of goods, wares, merchandise and all classes of freight by land or by water.

Form 42.

FURNITURE.

To manufacture, buy, sell and otherwise dispose of chairs, furniture, railway fixtures and appliances, mats, rugs, carpets and machinery and any and all kinds of same, and to sell and manufacture any and all goods or materials used therein or any of them; to deal in rattans and all products thereof; to purchase, sell or control patents, and to acquire and own licenses under patents or patent rights, and to grant license or licenses to other person or persons, corporation or corporations, to manufacture and sell said patented articles or appliances or machinery under any or all patents or licenses which it may own or have any interest in or may hereafter acquire, and also to buy and sell patents or patent rights of any nature or kind, and to grant licenses thereunder, and to do any and all other business which is lawful and not contrary to the Statute Laws of the State of New Jersey, and to establish agencies or branches in any and all places it may see fit and to do any and all lawful business incidental to or in any way connected with said purposes or any of them.

Form 43.

GRAIN ELEVATOR.

To buy and lease lands, and to erect thereon buildings and machinery for the purpose of receiving, warehousing and delivering grain and other merchandise; to issue bonds, secured by a mortgage or mortgages upon the property and franchises of said company, with the proceeds of which to erect suitable buildings and purchase machinery for said purpose, and

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to fit up, occupy, and use a grain elevator, or elevators, and to carry on the business of receiving, handling, and storing of grain and other merchandise and of issuing receipts for grain and merchandise received, and charging to and collecting from the owners or holders thereof reasonable charges for services done and performed in and about the receipt, handling, and storage of grain and other merchandise.

Form 44.**HOTEL.**

To purchase, take on lease or otherwise acquire lands, or buildings in or elsewhere; to erect on such lands as aforesaid, or any of them, hotel or hotels, cottages and any other necessary buildings and works, and to use, convert, adapt and maintain all or any of such lands, buildings and premises, to and for the purposes of hotels and inns, with their usual and necessary adjuncts.

To fit up and furnish the same, and to carry on the business of hotel and inn keepers, and a livery-stable keeper.

Form 45.**INVESTMENT COMPANY.**

To issue shares, stock, debentures, debenture stock, bonds, and other obligations; to invest the money so obtained in, and to hold, sell and deal with stock, shares, bonds, debentures, debenture stock and securities of any government, state, corporation, public or private, or other body or authority; to vary the investments of the company; to mortgage or charge all or any part of the property and rights of the company, including its uncalled capital; to make advances upon, hold in trust, issue on commission, sell or dispose of any of the investments aforesaid, or to act as agent for any of the above or the like purposes.

Form 46.**IRON.**

To buy, sell, deal in and deal with iron and iron ore, and all like or kindred products; to mine, manufacture, prepare for market, market and sell the same, and any articles or product in the manufacture or composition of which metal is a factor, including the acquisition by purchase, mining, manufacture or otherwise of all materials, supplies and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

To purchase, take on lease, or otherwise acquire any mines, mining rights and land in the United States or elsewhere, and any interest therein, and to explore, work, exercise, develop and turn to account the same; to quarry, smelt, refine, dress, amalgamate and prepare for market, ore,

metal and mineral substances of all kinds, and to carry on any other operations which may seem conducive to any of the company's objects; to buy, sell, manufacture and deal in minerals, plant, machinery, implements, conveniences, provisions and things capable of being used in connection with mining operations or required by workmen and others employed by the company.

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Form 47.

LAND AND GENERAL INVESTMENT.

To acquire by purchase, lease, exchange, hire or otherwise, lands, or any interest therein; to erect and construct houses, buildings or works of every description on any land of the company, or upon any other lands, and to rebuild, enlarge, alter and improve existing houses, buildings or works thereon, to convert and appropriate any such land into and for roads, streets and other conveniences, and generally to deal with and improve the property of the company; to sell, lease, let, mortgage or otherwise dispose of the lands, houses, buildings and other property of the company; to undertake or direct the management and sale of the property, building and lands; to transact on commission the general business of a real estate agent.

Form 48.

LEAD COMPANY.

To acquire by purchase, lease or otherwise, and to own, sell, lease, mortgage, convey, develop, improve and operate mines; to own, acquire, construct, enlarge, improve, operate and carry on works for smelting, parting, refining or working any base or precious metals, or the products thereof, and factories for the manufacture of lead in any and all commercial and medicinal forms and qualities, and for the manufacture of pyroligneous acid, acetate of lime and charcoal by the process of destructive distillation, carbon dioxide, magnesia and the products thereof, together with factories or works for the purpose of producing, refining or manufacturing linseed and castor oils, and vegetable, mineral or other oils and the products thereof, and compositions, articles and apparatus from and in connection therewith, and to manufacture the products of said mines and said substances; and generally to carry on such manufacturing or other business as may be necessary or convenient for the business and operations of the company, or any part thereof; to buy, sell, trade and deal in the products of said mines, factories, works and properties in their crude form, or in any state or stage of production or manufacture, as well as the properties themselves, including gold and silver bullion and base and precious metals, lead and oils of every kind and quality, and in any form or condition, and such other substances, products and materials as are commonly or conveniently used, manufactured, bought or sold in connection with said business or businesses, or any part or parts thereof,

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or as are necessary or convenient in and about or connected directly or indirectly with the transaction of the business of the said company.

Form 49.**LEATHER.**

That the objects for which the company is formed are the manufacture and sale of leather, lumber and belting, including the acquisition and use in the manner and to the extent permitted by law of all necessary and convenient lands, timber, bark, mills, plants, machinery, supplies and other articles and property necessary to or convenient in connection with the manufacturing and sale of leather, lumber and belting, as aforesaid; and in general, the engagement in any and all lawful business whatever, which may be found convenient or necessary in connection with the business of manufacturing and selling leather, lumber and belting as aforesaid, in the State of New Jersey and other States and Territories of the United States and elsewhere.

Form 50.**LIGHTING AND HEATING.**

To manufacture, sell and lease to other corporations and to public and private consumers, gas and oil machines, appliances and devices of all kinds for the production, supply and use of light, heat and power, and all goods, wares, merchandise, property and substances now used in the production thereof, or incidental thereto, or that hereafter may be invented, discovered or become known therein, and to manufacture, contract for, and furnish light, heat and power to other persons, firms and corporations, public and private.

Form 51.**MALT.**

The manufacturing, selling and dealing in malt and its by-products or products incidental thereto and all other products in the manufacture of which malt is or may be used, and the business incidental thereto.

Form 52.**MECHANICAL ENGINEERS.**

To carry on the business of mechanical engineers and dealers in and manufacturers of plants, engines and other machinery; tool makers; brass founders; metal workers; boiler makers; machinists; iron and steel converters; smiths; builders; metallurgists; electrical, civil and water supply engineers; and to buy, sell, manufacture, repair, convert, alter, let on hire and deal in machinery, implements, rolling stock and hardware of all

kinds; to build, construct and repair railroads, water, gas and electrical works, tunnels, bridges, viaducts, canals, hotels, wharves, piers, or any like work of internal improvement or public use or utility.

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Form 53.

MERCANTILE AGENCY.

To establish, maintain and conduct a general mercantile agency, to carry on every branch of business usually transacted in connection therewith, including the obtaining and acquiring by purchase or in any other lawful manner information, statistics, facts and circumstances of, relating to, or affecting the business, capital, debt, solvency, credit, responsibility and commercial condition and standing of any and all individuals, firms, associations and corporations engaged in or connected with any business, occupation, industry or employment in any part of the civilized world, and particularly in and throughout the United States and Canada, and to dispose of, sell, loan, pledge, hire and use in any and all lawful ways the information, statistics, facts and circumstances so obtained and acquired, also to establish, maintain and conduct a general collection business for the recovery, enforcement and collection of accounts, bills, debts, dues, demands and obligations and claims of all kinds, also to establish and conduct a general business of making and issuing contracts to secure the faithful performance of any mercantile or commercial contract or agreement, and for the prompt payment of any debt or obligation due under or arising from or out of any mercantile or commercial transaction; also to acquire by purchase or otherwise and to establish, maintain and conduct a general printing, publishing, book binding and advertising business, and to prepare and distribute newspapers, books, pamphlets, directories, catalogues, reports, ratings, digests, lists and other printed matter of interest or use to merchants, traders, bankers and lawyers.

Form 54.

MINING.

To purchase, take on lease, or otherwise acquire any mines, mining rights and land in or elsewhere, and any interest therein, and to explore, work, exercise, develop, and turn to account the same; to quarry, smelt, refine, dress, amalgamate and prepare for market, ore, metal and mineral substances of all kinds, and to carry on any other operations which may seem conducive to any of the company's objects; to buy, sell, manufacture and deal in minerals, plant, machinery, implements, conveniences, provisions and things capable of being used in connection with mining operations, or required by workmen and others employed by the company; to construct, carry out, maintain, improve, manage, work, control and superintend any roads, ways, railways, bridges, reservoirs, water courses, aqueducts, wharves, furnaces, mills, crushing works, hydraulic works, works, factories, ware-

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houses, and other works and conveniences which may seem directly or indirectly conducive to any of the objects of the company, and to contribute to, subsidize, or otherwise aid or take part in any such operations.

Form 55.**MINING.**

To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in gold, silver, copper, lead, zinc, brass, iron, steel and in all kinds of ores, metals and minerals, and in the products and by-products thereof of every kind and description, and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, exchange, lease, acquire and deal in lands, mines and minerals, rights and claims, and in the above specified products, and to conduct all business appurtenant thereto.

Form 56.**NEWSPAPER.**

To carry on business as proprietors and publishers of newspapers, journals, magazines, books and other literary works and undertakings and especially to take over the publication known as the

to carry on business as printers, booksellers, bookbinders, stationers, photographers, photographic printers, stereotypers, electrotypers, lithographers, and any other business or manufacture that may seem expedient; to undertake and transact all kinds of business relative to the gathering and distribution of information of every sort and kind to the same extent that a natural person might or could do, and in connection therewith to acquire by purchase or otherwise, construct, maintain and otherwise deal with land and submarine telegraphs, including in such expression telephone and all other electrical or other contrivances for transmitting messages by signal; lands, works, buildings and conveniences in any part of the world.

Form 57.**NEWSPAPER AND PUBLISHING.**

To acquire, print, publish, conduct and circulate or otherwise deal with any newspaper or newspapers or other publications, and generally to carry on the business of newspaper proprietors and general publishers; to carry on, if and when it shall seem desirable, the trade or business of general printers, lithographers, engravers and advertising agents; to build, construct, erect, purchase, hire, or otherwise acquire or provide any buildings, offices, workshops, plant and machinery or other things necessary or useful for the purpose of carrying out the objects of the company.

Form 58.**PAPER.****Forms
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To maintain, conduct and manage the business of manufacturing, producing, purchasing, selling and dealing in any and all kinds of paper, and any and all ingredients, products and compounds thereof, and any and all materials that now are or hereafter may be used in, or in connection with such manufacture, including the manufacture and production of wood pulp and any other fibre; and, as a part of and incident to such business, the mining of iron pyrites, clay, sulphur, coal, agolite, and any fibrous minerals and materials, the purchase, lease or other acquisition and the development of woodlands and the manufacture, sale and disposition of any surplus product of said woodlands; and the production and sale of any surplus or by-products in said business.

Form 59.**PAPER.**

To carry on the business of importers of, dealers in and manufacturers of paper, paper materials and paper substitutes of all kinds, and of the raw substances, pulps, preparations, mixtures, solvents and combinations thereof for any purpose whatsoever, and articles and substances made from any kind of paper, pulp, mixture, combination, solvent, preparation or material used in the manufacture or treatment of paper or paper substitutes; also, the business of stationers, lithographers, publishers, wall and ceiling paper manufacturers, and paper stainers; also the business of importers and dealers in and manufacturers of cotton, silk, woollen, linen, jute, textile, fibrous and all other materials and the yarns and other products and materials made therefrom, and all kinds of fabrics, substances, articles and things manufactured from such yarns, products and materials; the importing of, dealing in and manufacturing of all kinds of imitation leathers and rubbers, waterproof goods and all other articles made from any such fabrics, substances, articles and things; also, the business of manufacturers and importers of and dealers in paints, varnishes, printing inks, and all other articles and things which can be conveniently manufactured, imported or dealt in by persons carrying on any of the above businesses.

Form 60.**TO PURCHASE AND WORK PATENTS.**

To purchase or acquire the letters patent of the United States of America granted to A. B., covering the manufacture of _____, and apparatus and machinery therefor, dated _____, Number _____ and Number _____ respectively, and any subsequent improvement or improvements in and upon the said manufacture, apparatus and machinery which may be invented by the said A. B., and all extensions

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of the said letters patent or any of them, and also the several letters patent granted to the said A. B. by the governments of and any other letters patent which may hereafter be granted to the said A. B. by the United States of America, or by the government of any country whatsoever, either in respect of the inventions comprised by the hereinbefore mentioned letters patent, or any of them, or any such further inventions or improvements as before mentioned, and all extensions with reference thereto respectively; to carry on the business of a manufacturer of ; to acquire by purchase or otherwise for the business of the company in the State of New Jersey or elsewhere, any estate or estates, land or buildings, mills, plant, machinery, patents, patent rights, secret processes, or other things, and to erect and maintain, or reconstruct and adapt buildings, mills, plant, machinery, and other things found necessary or convenient for the purposes of the company; to obtain letters patent or similar privileges in this or any other country for any invention in connection with the company's manufacture or business; to sell, lease, or otherwise dispose of the lands, buildings, plant, property and effects of the company; to sell the patents, patent rights, or secret processes to be acquired by the company, or any of them, and to grant licenses to use the same to any person or persons, company or companies.

Form 61.

PIPE FOUNDRY.

To carry on the business of manufacturing, producing, preparing, buying and selling, or otherwise dealing in cast-iron pipe of any and all kinds; to manufacture and sell castings and fittings; to mine or purchase ore, and to manufacture therefrom iron and steel; to purchase pig iron and to convert such iron and steel into marketable products, and to market the same; to build, purchase, own, lease or otherwise hold houses, stores, furnaces, mills, foundries and structures of every description necessary or proper for the use and conduct of the business herein contemplated, including the buying and selling or otherwise disposing of the same; to mine coal and make coke necessary for the company's use; to manufacture, purchase, or otherwise acquire, and to hold, mortgage, pledge, sell, assign, transfer or otherwise dispose of any of the products, materials, goods, wares, merchandise and property of every class and description; to store and warehouse any of its products and to issue warehouse receipts therefor; to purchase, build, acquire, own and operate, except in the State of New Jersey, such railroads connected with its plants as may be deemed necessary, and to acquire, own and operate steam and other vessels, pipe lines, and telegraph and telephone lines, so far as the same shall be deemed necessary in its business; to manufacture hydrants, valves and other supplies used in connection with iron or steel pipe; to build, construct, acquire, own and operate water, gas, electric, pneumatic and hydraulic plants; to purchase, lease or otherwise acquire all or any part of the business, assets or liabilities of any person, firm, association or corporation now or here-

after engaged wholly or in part in the manufacture of cast-iron pipe or kindred products.

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Form 62.

PLUMBERS' SUPPLIES.

To carry on the trade or business of manufacturing, producing, adapting, preparing, buying and selling and otherwise dealing in any and all kinds of plumbing and sanitary fixtures and supplies; including lead pipe, traps, sheet lead, and solder and plumbers' wares in iron, lead, brass, wood, marble, earthenware or other material; and to manufacture, produce, purchase, adapt, prepare, use, sell or otherwise deal in any materials, articles or things required for, in connection with, or incidental to, the manufacture, use, purchase and sale of or other dealing in any and all of, the aforesaid wares and articles; and also to carry on any other manufacturing or distributing business which can conveniently be carried on in conjunction with any of the matters aforesaid, or in or upon the premises of the company.

Form 63.

POTTERY.

To manufacture, buy, sell, trade and deal in any and every kind or class of pottery or earthen products, or articles composed in whole or in part of kaolin, clay or earthy matter; to mine, manufacture, prepare, buy, sell, deal and trade in any and every gaseous or other ingredient, material or substance entering into such manufacture, or used in conjunction therewith, or used in or about businesses similar to or relating thereto.

Form 64.

POWDER AND DYNAMITE.

To manufacture, buy, sell, deal in and deal with corn and vegetable products, chemical compounds, dynamite, gunpowder, cellulose and its derivatives and compounds, extracts, chemicals, raw and manufactured materials, and all like or kindred products; to manufacture, treat, prepare for market, market and sell the same and any articles or product, in the manufacture or composition of which they, or either of them, are a factor; to buy, sell, treat, manufacture, refine, manipulate, import, export and deal in all substances, vegetable, chemical, or otherwise, apparatus, products and things capable of being used in any such business as aforesaid, or required by any customers or persons having dealings with the company.

Form 65.

PUBLIC WORKS.

To construct, equip, improve, work, develop, manage, or control public works and conveniences of all kinds, including railways, docks, harbors,

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piers, wharves, canals, reservoirs, embankments, improvement, sewage, drainage, sanitary, water, gas, electric light, telephonic, telegraphic, and power supply, works and hotels, warehouses, markets, and public buildings, tunnels, bridges, viaducts and all other works or conveniences of public use or utility; to apply for, purchase, or otherwise acquire, any contracts or concessions, for or in relation to the construction, execution, carrying out, equipment, improvement, management, administration, or control of public works and conveniences, and to undertake, execute, carry out, dispose of, or otherwise turn to account the same; to purchase or otherwise acquire, issue, re-issue, sell, place, and deal in shares, stocks, bonds, debentures and securities of all kinds, and to give any guaranty or security for the payment of dividends or interest thereon, or otherwise, in relation thereto.

Form 66.**RAILWAY CARS.**

The objects for which, and for any of which, the corporation is formed, are the manufacturing and sale of railway cars, passenger, freight and street cars; the manufacturing and sale of car trucks, car wheels, and any and all parts of car or car trucks, including truck frames and all the accessories thereto, and all car equipments and appliances and specialties; the manufacture and sale of all the products of steel or of iron or of other metals, and of wood, or of any or all other materials; the manufacture and sale of iron castings, steel castings, journal bearings, malleable iron, the manufacturing and sale of all kinds of springs, including car springs; the manufacturing and sale of all kinds of water pipes and gas pipes, or other pipes; to manufacture, purchase or otherwise acquire, to hold, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and with the products, materials, goods, wares and merchandise and property of every class and description, including the right to enter into or upon any and all mercantile business or businesses, and for that purpose to acquire by purchase, lease or otherwise stores or property available therefor, and to operate and maintain any and all stores or warehouses or business houses necessary or expedient for such purpose; to make, purchase, sell and deal in manufactured articles and to acquire and dispose of rights to make and use the same; to purchase, lease or otherwise acquire all or any part of the business and assets of any person, firm, association or corporation now or hereafter engaged in a business similar to that proposed to be carried on under this certificate of incorporation, and in the purchase of any such business or assets to assume any and all liabilities that may be then existing upon any such business or assets so purchased; to purchase or otherwise acquire mines and mining lands; to mine any and all metals, to engage in mining in all its branches, and to sell or dispose of the products of such mining; to engage in smelting in all its branches; to purchase or otherwise acquire lumber lands, to cut and mill lumber, to establish and operate lumber

mills, and to sell and dispose of and deal in lumber, and to engage in the lumber business in all its branches; to establish and operate rolling mills; to acquire by lease, purchase or otherwise any and all real estate necessary and convenient for the establishment and operation of rolling-mills, and to operate and maintain the same; to acquire or construct railroads (other than railroads within the State of New Jersey), steamships or vessels; to use, operate and maintain the same.

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Form 67.

RUBBER.

The objects for which the said company is formed are the making, purchasing and selling rubber boots and shoes and all goods of which rubber is a component part, and the various materials entering into the manufacture of any and all such goods, and also the acquiring and disposing of rights to make and use any and all such goods, and materials, and the doing and transacting all acts, business and things incident to or relating to or convenient in carrying out its business as aforesaid, which are authorized by law, including the purchasing the stock of any company or companies owning, mining, manufacturing or producing materials or other property necessary for its business or of any other company whose shares it may lawfully purchase and exercising with relation thereto all the rights, powers and privileges of individual owners of the shares of such stock.

Form 68.

SECURITIES AND INVESTMENTS.

To purchase, receive, hold and own bonds, mortgages, debentures, notes, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness of any private, public or municipal corporation, or of the Government of the United States or of any state, territory or colony thereof, or of any foreign state or country; to receive, collect and dispose of interest, dividends and income upon, of and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held or owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof; to do any and all acts and things tending to increase the value of the property at any time held by the company; to issue bonds and to secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held by the company, and to sell or pledge such bonds for proper corporate purposes, as and when the board of directors shall determine; and, in the promotion of its said corporate business of investment and to the extent authorized by law, to lease,

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purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature; but nothing herein is to be construed as intended to form a banking company, a trust company, a savings bank or a corporation intended as a part of its business to derive profit from the loan and use of money.

Form 69.**SHIP-BUILDING.**

To build, make, operate, maintain, buy, sell, deal in and with, own, lease, pledge and otherwise dispose of ships, vessels and boats of every nature and kind whatsoever, together with all materials, articles, tools, machinery and appliances entering into, or suitable and convenient for the construction or equipment thereof, and together with engines, boilers, machinery and appurtenances of all kinds, and tackle, apparel, and furniture of all kinds; the transportation of goods, merchandise and passengers upon land or water; building, repairing and designing houses, structures, vessels, ships, boats, wharves, docks, dry-docks, railroads, engines, cars, machinery and all other equipment; constructing, maintaining and operating railroads (other than railroads within the State of New Jersey); to build, construct, repair, maintain and operate water, gas or electrical works, tunnels, bridges, viaducts, canals, wharves, piers and like works of internal improvement or public use or utility; to own, operate and maintain steamship lines, vessel lines or other lines for transportation.

Form 70.**SHIPPING.**

To construct, hire, purchase and operate steamships and other vessels of any class, and to establish and maintain lines or regular services of steamships or other vessels, and generally to carry on the business of shipowners, and to enter into contracts for the carriage of mails, passengers, goods and merchandise by any means, either by its own vessels, railways and conveyances, or by or over the vessels, conveyances and railways of others; to construct, purchase, take on lease, or otherwise acquire and work any railway, wharf, pier, dock, buildings or works capable of being advantageously used in connection with the business of the company as a shipping company; in connection with any of the objects aforesaid to carry on the business of a railway company, railway contractors, shipbuilders, engineers, manufacturers of machinery and car-builder; to acquire concessions or licenses for the establishment and working of lines of steamships or sailing vessels between any ports of the world, or for the formation or working of any railway, wharf, pier, dock, or other works, or for the working of any public conveyances.

Form 71.**SINGLE SHIP.****Forms
71-74**

To purchase or otherwise acquire the [steam] ship together with all requisite equipment for the same; to charter, hire, equip, load on commission, or otherwise use, repair, let out on hire, and trade with the said vessel or any substituted vessel; to purchase any property or merchandise whatsoever, for the purpose of freighting the said vessel or substituted vessel, and to dispose of the same by sale or otherwise; to carry on the business of a shipowner in all its branches with respect to the said vessel or substituted vessel.

Form 72.**SMELTERS AND REFINERS.**

To acquire, deal in, sell and otherwise dispose of ores, minerals and metals; to smelt, reduce, refine, mill and otherwise treat ores, minerals and metals; and to manufacture, acquire, deal in, sell and otherwise dispose of products of ores, minerals and metals.

Form 73.**STATIONERS, &C.**

To carry on the businesses of stationers, printers, lithographers, electrotypers, engravers, die sinkers, envelope manufacturers, bookbinders, book manufacturers; to carry on the business of booksellers, publishers and dealers in the materials used in the manufacture of paper, and dealers in or manufacturers of any other articles or things of a character similar or analogous to the foregoing, or any of them or connected therewith.

Form 74.**STREET RAILWAY.**

To engage in and carry on the business of manufacturing street railway cars, railroad cars, automobiles, omnibuses, and all other vehicles for the transportation or conveyance of passengers, freight, mail or express, and of manufacturing car trucks, car wheels, equipment and rolling stock; and of purchasing and otherwise acquiring, constructing, equipping, leasing, maintaining and operating, by electricity or other power, street railways for the transportation of passengers, mail, express, merchandise or other freight, in any state or territory of the United States, or in any foreign country (except that the corporation shall not operate a railroad within the State of New Jersey); and of manufacturing, generating, storing, using, selling and leasing electricity for power, light or heat, or other purposes, and for the purpose of acquiring the real and personal property, rights, privileges, ordinances and franchises of any

**Forms
75-77**

street railway companies, and of electric power, light or heat companies, foreign or domestic, now or hereafter existing, or of leasing the same, or acquiring and holding the shares, bonds, or other securities of such railway or electric power, light or heat companies, or any interest therein; buying, selling and otherwise trafficking and dealing in any of the same; leasing, buying or otherwise acquiring, operating, maintaining and letting, selling or otherwise disposing of lands, mills, manufactories, plants, businesses, good-will, patents, patent rights, and all rights and privileges in connection therewith, and other property and appurtenances pertaining to said business; acquiring, operating and maintaining, and disposing of storage, transportation and all other facilities and conveniences whatsoever and wheresoever in connection with any of the purposes herein referred to; acting as financial, commercial and general agent for any and all other corporations and individuals, whomsoever and wheresoever, in the conduct of its or their business.

Form 75.**SUGAR.**

The purchase, manufacture, refining and sale of sugar, molasses and melada and all lawful business incidental thereto.

Form 76.**TELEGRAPH AND TELEPHONE CONSTRUCTION COMPANY.**

(To do business without the state.)

To acquire by purchase, or to construct and otherwise deal with telegraphs, telephones and all other electrical or other contrivances for transmitting messages by signal, works, buildings, conveniences; to acquire by purchase or otherwise any lands, or interest therein; to acquire, carry on and deal with the undertakings, lands, property, and businesses of telegraph or telephone companies and of companies and persons engaged in manufacturing, constructing and laying down telegraph or telephone lines, instruments, machinery, wire and other materials and things used with or appertaining to telegraphs and telephones

[A telegraph or telephone corporation cannot be organized under the General Corporation Act to do business in New Jersey. (See section 6, p. 13, *ante*) The organization of a telegraph or telephone company to do business out of the state is permitted, but in those states where the rule is that a foreign corporation cannot obtain a franchise of a public nature the practical operations of such companies would probably be limited to constructing lines, or, possibly, operating them through a local company having a properly granted franchise.]

Form 77.**THEATRICAL.**

To purchase, own, produce, and present, and to license others to produce and present, theatrical plays and operas and to acquire and hold, sell, assign and transfer, copyrighted and uncopyrighted plays and operas.

Form 78.**THREAD.****Forms
78-81**

To manufacture cotton, linen, silk, wool and other threads, cloths, fabrics, and other manufactures, articles and goods composed in the whole, or in part, of cotton, flax, hemp, silk, wool or other material; to buy, grow, prepare and sell the stock and raw material for said manufactures and to purchase or manufacture blocks, spools, bobbins, boxes, tickets, labels, wrappers, show cards, machines, tools and other appliances, articles or products whatsoever required in, and connected with the said businesses, and the trading in, dealing in, selling and disposing of the articles purchased or manufactured by the company.

Form 79.**TOBACCO COMPANY.**

The objects for which this corporation is formed are to cure leaf tobacco, and to buy, manufacture and sell tobacco in any and all its forms, and to erect or otherwise acquire factories and buildings; to establish, maintain and operate factories, warehouses, agencies and depots for the storing, preparation, cure and manufacture of tobacco, and for its sale and distribution, and to transport or cause the same to be transported, as an article of commerce, and to do any and all things incidental to the business of trading and manufacturing aforesaid.

Form 80.**TYPESETTING MACHINES.**

The objects for which this corporation is formed are the purchase, manufacture, sale and letting of machinery and instrumentalities and all other materials and objects used in the art of printing and all improvements thereon and substitutes therefor, and all materials used in manufacturing the same; and also acquiring and disposing of rights to manufacture, use and sell or otherwise dispose of rights to manufacture, use and sell or otherwise dispose of such machines, instrumentalities and materials; and also transacting other kinds of business incidental thereto or which may be profitably carried on in connection therewith.

Form 81.**TYPEWRITING MACHINES.**

To carry on the business of manufacturing, buying, selling, operating and distributing writing machines, typewriters, typewriter materials, appliances and inventions, and all other materials and articles connected with, or in any wise relating to the manufacture, sale or use of writing machines and typewriters; to establish and maintain manufactories, agencies and depots for the manufacture, purchase, sale, exchange, delivery and distri-

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bution of writing machines, typewriters and typewriter appliances and supplies; to purchase, receive, hold, sell, assign, license to use, or otherwise dispose of, any patents for inventions, discoveries, or rights therein, owned, operated, used, or employed in the business of manufacturing, buying, selling, or using writing machines, typewriters or typewriter supplies.

Form 82.
WAREHOUSE.

To carry on the business of cold storage and warehousing and all the business necessarily or impliedly incidental thereto; and to further carry on the business of general warehousing in all its several branches; to construct, hire, purchase, operate and maintain all or any conveyances for the transportation in cold storage or otherwise by land or by water of any and all products, goods or manufactured articles; to issue certificates and warrants, negotiable or otherwise, to persons warehousing goods with the company, and to make advances or loans upon the security of such goods or otherwise; to manufacture, sell and trade in all goods usually dealt in by warehousemen; to construct, purchase, take on lease or otherwise acquire any wharf, pier, dock or works, capable of being advantageously used in connection with the shipping and carrying or other business of the company; and generally to carry on and undertake any business undertaking, transaction, or operation commonly carried on or undertaken by warehousemen, and any other business which may from time to time seem to the directors capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of or render profitable any of the company's properties or rights.

Form 83.
WATER POWER.

To purchase, acquire, hold, lease, manage, control and operate, and to sell, lease and dispose of to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions, as to this corporation may seem proper, water, water rights, power, privileges and appropriations, for mining, milling, agricultural, domestic and other uses and purposes; and to develop, control, generally deal in and dispose of to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions as to this corporation may seem proper, electrical and other power, for the generation, distribution and supply of electricity for light and heat, and for any other uses and purposes to which the same are adapted.

Form 84.**WOOLEN AND WORSTED.****Forms
84-85**

To carry on the trade or business of manufacturing, producing, adapting, preparing, buying and selling, and otherwise dealing in woolen and worsted goods. and other fabrics, and to manufacture, produce, purchase, adapt, prepare, use, sell or otherwise deal in any materials, articles or things required for, in connection with or incidental to, the manufacture, use, purchase, sale of, or other dealing in woolen and worsted goods and other fabrics; and generally to carry on any other manufacturing business which can conveniently be carried on in conjunction with any of the matters aforesaid, or in or upon the premises of the company.

Form 85.**SHARON ESTATE COMPANY;****Extract from the Certificate of Incorporation.**

The objects for which said company is formed are as follows, viz.: To take, acquire, buy, hold, own, sell, lease, mortgage, improve, cultivate and otherwise deal in and dispose of real estate; to take, acquire, buy, hold, own, hire, lease, mortgage, pledge and otherwise deal in and dispose of all kinds of personal property, chattels and chattels real, choses in action, patents for inventions, bullion, gold, silver and other ores; to purchase, take, acquire, buy, hold, own, sell, lease, mortgage and otherwise deal in and dispose of all kinds of mines; to take, acquire, appropriate, purchase, sell, store, supply and furnish water for irrigation, manufacturing, mining and domestic uses, and for any other purposes to which water can be applied as a use; to construct and maintain reservoirs, dams, canals, ditches, flumes and pipe lines, and all other works necessary or convenient for the catchment, diversion, storage, distribution or use of water; and to take, acquire, buy, hold, own, sell, lease, mortgage and otherwise deal in and dispose of the same, and rights to water and riparian rights; to purchase, construct, sell, lease, mortgage and otherwise dispose of viaducts, ferries, wharves, chutes, piers, canals and ditches for draining, agriculture, mining and navigation, and other purposes; to construct and erect buildings; to take, acquire, purchase, sell, lease, mortgage, construct, erect, hold, maintain and conduct hotels and lodging houses, and all businesses incident thereto and connected therewith; to carry on and conduct agricultural, horticultural, pomological and dairy businesses; to buy, sell, mortgage, construct, maintain and charter vessels propelled by means of sails, steam, electricity or other motive power, and to navigate the same in all the navigable waters of the earth; to engage in, conduct and carry on manufacturing, mining, mercantile, mechanical and commercial businesses in all their branches; to insure or guarantee the title to lands, or to any estate or interest in lands; to issue debenture bonds or bonds secured by mortgage or mortgages upon the property and franchises of the said company, or otherwise, and to sell the same for the

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purpose of making money with which to enlarge or carry on the business of the said company or any part thereof, and for the purchase of any real or personal property therefor, or for any other lawful purpose; to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of shares of the capital stock of any other corporation or corporations, created under the laws of this or any other state or country, and to exercise, while owner of such stocks, all the rights, powers and privileges, including the right to vote thereon, which natural persons being the owners of such stock might, could or would exercise; to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of any securities or evidences of debt created by any other corporation of this or any other state or country, in the same manner and to the same extent as natural persons being the owners thereof might, could or would do; and in general to engage in any and all lawful business whatever necessary or convenient in connection with the business of said company (except that of an insurance company, a banking company, a savings bank or other corporation intended to derive profit from the loan and use of money, a railroad company, a turn-pike company, or any other company which shall need to possess the right of taking and condemning lands, except for the damming of rivers and streams, and for the purposes appertaining thereto); and to do any and every act or acts, thing or things, incidental to, growing out of or connected with said business, or any part or parts thereof.

GENERAL CLAUSES.

After setting forth the specific objects for which the corporation is established, the modern practice in preparing certificates of incorporation is, first, to state a variety of additional objects, giving power to the corporation to carry on such other kinds of business, more or less closely connected in nature with the special objects set forth, as can probably be profitably carried on in conjunction with the specific business; and, second, to state *in extenso* the general powers of the corporation.

While it is undoubtedly true that the corporation would by implication possess many of such powers if not stated in the certificate, it is to be borne in mind that when a corporation goes into a foreign jurisdiction it takes its charter with it, and persons dealing with the company are chargeable with notice of all matters contained in the certificate of incorporation, whereas they would not be chargeable with knowledge of the general laws of a foreign state.

Another advantage is that the certificate of incorporation is used by business men as a practical guide, and they like to see plainly stated what they can do and what they cannot do. For instance, a lawyer knows that a corporation has power to issue negotiable paper whether the certificate of incorporation contains a specific grant of such power or not; the business man wants to see it so stated positively and not left to implication.

A selection of the following forms may be advantageously used in almost every case.

Form 86.**To manufacture and sell:**

To manufacture, purchase, or otherwise acquire, hold, own, mortgage, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise, and property of every class and description.

Form 87.**To purchase, hold, &c., real estate :**

To the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, maintain, work, develop, sell, convey, mortgage, or otherwise dispose of, without limit as to amount, within or without the State of New Jersey, and in any part of the world, real estate and real property, and any interest and rights therein.

Form 88.**To purchase property :**

Generally to purchase, take on lease or in exchange, hire or otherwise acquire, any real and personal property, and any rights or privileges which the company may think necessary or convenient for the purposes of its business.

Form 89.**To carry on other business :**

To carry on any other business (whether manufacturing or otherwise) which may seem to the company capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of the company's property or rights.

Form 90.**To acquire other businesses :**

To acquire the good-will, rights, property and assets of all kinds, and to undertake the whole or any part of the liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock, bonds, debentures, or other securities of this corporation, or otherwise.

Form 91.**To conduct business in other states :**

To have one or more offices, to carry on all, or any part of its operations and business, and unlimitedly and without restriction to hold, purchase, mortgage, lease and convey real and personal property and to conduct its business in any state or territory of the United States, and in any foreign country or place, but subject always to the laws thereof.

Form 92.**To conduct business in other states :**

To conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage and convey real and personal property in or out of this state, and in such place and

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places in the several states and territories of the United States, the District of Columbia, colonial possessions or territorial acquisitions of the United States, and in foreign countries, as shall from time to time be found necessary and convenient for the purposes of the company's business.

Form 93.**To remunerate promoters :**

To remunerate any person or persons or corporation for services rendered, or to be rendered, in placing, or assisting to place, or guaranteeing the placing of, any of the shares of the company's capital, or any debentures or other securities of the company, or in or about the formation or promotion of the company or the conduct of its business.

Form 94.**To make contracts, &c. :**

To enter into, make, perform and carry out contracts of every sort and kind, with any person, firm, association, corporation, private, public or municipal, or body politic, and with the government of the United States, or any state, territory or colony thereof, or any foreign government; to purchase, lease, exchange, hire or otherwise acquire any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of its business.

Form 95.**To borrow money, issue bonds, &c. :**

To borrow money, to make and issue promissory notes, bills of exchange, bonds, debentures and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, without limit as to amount, and to secure the same by mortgage, pledge or otherwise.

Form 96.**To construct works, &c. :**

To purchase, lease, exchange, hire or otherwise acquire any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of its business; to erect and construct, make, improve, aid or subscribe toward the construction, making, and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, houses for employees and others, and works of all kinds; and in conjunction with and in furtherance of the general business and purposes of the corporation, as above described, to construct, lease, own, operate or sell transportation line or lines, in any state or country, subject to the laws of such state or country, either directly or through the ownership of stock of a corporation formed, or to be formed, for the purpose, under the laws of such state or country.

Form 97.**To acquire patents, &c.:**

To apply for, obtain, register, purchase, lease or otherwise acquire, and to hold, own, use, operate, introduce and sell, assign or otherwise dispose of, any and all trade-marks, formulæ, secret processes, trade names and distinctive marks, and all inventions, improvements and processes used in connection with or secured under letters patent or otherwise, of the United States or of any other country; and to use, exercise, develop grant licenses in respect of, or otherwise turn to account any and all such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and, with a view to the working and development of the same, to carry on any business, whether mining, manufacturing, or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

Form 98.**To acquire the company's own stock:**

The corporation may use and apply its surplus earnings, or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payment of dividends, unless otherwise determined by a majority of the board of directors, or a majority of the stockholders.

Form 99.**To acquire stock, &c., of other companies:**

To hold, purchase or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock and bonds, debentures or other evidences of indebtedness created by other corporation or corporations, and, while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

Form 100.**To guarantee dividends on shares of other companies:**

To guarantee the payment of dividends or interest on any shares, stocks, debentures or other securities issued by, or any other contract or obligation of, any corporation whenever proper or necessary for the busi-

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ness of the corporation in the judgment of its directors; and provided the required authority be first obtained from the board of directors for that purpose.

[As to the power to guarantee the bonds of another corporation, see *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217, 247.]

Form 101.

To control and manage other companies :

To cause or allow the legal title, estate and interest in any property acquired, established, or carried on by the company to remain or be vested, or registered in the name of, or carried on by any other company or companies, foreign or domestic, formed or to be formed, and either upon trust for, or as agents or nominees of this company, or upon any other terms or conditions which the board of directors may consider for the benefit of this company, and to manage the affairs, or take over and carry on the business of such company or companies so formed or to be formed, either by acquiring the shares, stocks, or other securities thereof, or otherwise howsoever, and to exercise all or any of the powers of holders of shares, stocks, or securities thereof, and to receive and distribute as profits the dividends and interest on such shares, stocks, or securities.

Form 102.

General words :

To do any or all of the things in this certificate set forth as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise.

Form 103.

General words :

To do all and everything necessary, suitable, convenient or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objects herein enumerated, or incidental to the powers herein named, or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holders of or interested in, any property or otherwise; with all the powers now or hereafter conferred by the laws of New Jersey upon corporations under the act hereinafter referred to.

[As to the utility of such clauses see the leading English case, *Peruvian Rys. Co. v. Insurance Co.*, 2 Ch. 617; see also *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217.]

Form 104.**Forms
104-106****Interpretation clause :**

It is the intention that the objects and powers specified and clauses contained in this paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects and powers specified in each of the clauses of this paragraph shall be regarded as independent objects and powers.

STOCK PREFERENCE CLAUSES.

[Sections 8, subdiv. IV., 18, pp. 16, 33.]

Form 105.**Preference shares—non-cumulative :**

The stock of the said company is to be of two kinds, to wit: general stock and preferred stock. The amount of the preferred stock shall at no time exceed two-thirds of the total outstanding capital stock of the company. The holders of the preferred stock shall be entitled to receive semi-annually all net earnings of the company determined and declared as dividends in each fiscal year up to but not exceeding eight per cent. per annum upon all outstanding preferred stock before any dividend shall be set apart or paid on the general stock, but such dividends upon the preferred stock shall not be cumulative, and the preferred stock shall not be entitled to participate in any other or additional earnings or profits. In case of liquidation or dissolution of the company the holders of preferred stock shall be entitled to receive cash to the amount of their preferred stock at par before any payment in liquidation is made upon the general stock, and shall not thereafter participate in any of the property of the company or proceeds of liquidation.

(United States Rubber Co.)

Form 106.**Preference shares—non-cumulative :**

Of said stock fifteen millions of dollars, divided into three hundred thousand shares of fifty dollars each shall be general or common stock and ten millions of dollars divided into one hundred thousand shares of one hundred dollars each shall be preferred stock. Said preferred stock shall entitle the holders to receive in each year a dividend of eight per cent., payable half yearly before any dividend shall be set apart or paid on said general or common stock, and if the net profits in any year shall not be sufficient to pay a dividend of eight per cent. on said preferred stock then such dividend shall be paid thereon as the net profits of the year will suffice to pay. The holders of the preferred stock shall have a preference on the assets of the company, but the dividends thereon are

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not to be cumulative, but shall be payable each year only out of profits of that year, and such preferred stock and the certificates therefor may be issued by the board of directors by resolution.

(American Tobacco Co.)

Form 107.**Preference shares—non-cumulative:**

The holders of said preferred stock shall be entitled to receive in each year, out of the accumulated profits of the corporation, in excess of such sum, if any, as shall have been fixed and reserved as a working capital, a non-cumulative dividend of seven per cent., payable quarterly, half yearly, or yearly, as the directors may from time to time determine, before any dividend shall be set apart or paid on the general or common stock of the corporation. If the accumulated profits in excess of the sum fixed and reserved as a working capital shall not be sufficient to pay, in any year, a dividend of seven per cent. on said preferred stock, then such dividend shall be paid thereon as such excess of accumulated profits will suffice to pay; but the dividends thereon shall not be cumulative, but shall be payable for each year only out of the accumulated profits in excess of the sum fixed and reserved as a working capital, and not out of accumulated profits of any subsequent year or years.

Upon the dissolution of the corporation, or upon final distribution of its assets, and after the payment of its debts, the preferred stock shall be redeemed at par if the assets of the corporation, including surplus and accumulated profits, are sufficient. If the assets are not sufficient to redeem said stock at par, then all said assets, or their proceeds, shall be distributed ratably among the holders of such preferred stock. If the assets are more than sufficient to redeem the preferred stock at par, all remaining after such redemption shall be divided ratably among the holders of the general or common stock of the corporation.

(The Continental Tobacco Co.)

Form 108.**Preference shares—cumulative:**

Said preferred stock shall entitle the holder thereof to receive out of the net earnings, and the company shall be bound to pay a fixed yearly cumulative dividend of eight per centum, but no more, payable quarterly, before any dividend shall be set apart or paid on the common stock.

Such preferred stock may be issued as and when the board of directors shall determine, and the vote or assent of the stockholders shall not be necessary for such issue.

The holders of preferred stock shall, in case of liquidation or dissolution of the company, be entitled to be paid in full, both the principal of their shares and the accrued dividends charged before any amount shall be paid to the holders of the general or common stock.

(Atlantic Snuff Co.)

Form 109.**Preference shares—cumulative :**

From and after March first, one thousand eight hundred and ninety-eight, the holders of such preferred cumulative stock shall be entitled to receive, and the company shall be bound to pay thereon, but only out of the net profits of the company, a fixed yearly dividend of seven per centum payable half yearly, before any dividends shall be set apart for or paid on account of the common stock; and the dividends on the preferred stock shall be cumulative; and if in any year dividends amounting to seven per centum are not earned and paid on such preferred stock, the deficiency shall be a charge upon the net earnings of the company, and shall be subsequently payable before any dividend shall be set apart for or paid on the common stock; and the holders of the preferred stock shall, in case of dissolution or liquidation of the company, be entitled to be paid in full, both the principal of and the accrued dividends upon their shares, before any sum shall be paid to the holders of the common stock.

After setting aside the sums necessary for working capital, and after the payment of the fixed dividends on the preferred stock, dividends may be declared on the common stock from time to time out of the surplus earnings or net profits of the company.

(The American Fisheries Co.)

Form 110.**Preference shares—cumulative :**

The preferred stock shall have a preference over the common stock in respect to dividends to the amount of seven per centum per annum, payable quarterly, half yearly or yearly, which shall be cumulative; that is to say, no dividend shall be paid upon the common stock until the preferred stock shall have received dividends at said rate from the time of issue thereof. The preferred stock shall also have a preference over the common stock in any distribution of the assets of the corporation other than profits until the full par value thereof and seven per centum per annum thereon from the time of issue shall have been paid by dividends or distribution. The preferred stock shall not be entitled to any dividend in excess of said seven per centum per annum, nor to any shares in distribution of assets in excess of said par value and the amount then unpaid of said cumulative dividends; but only the common stock shall be entitled to any further dividend, or to any further share in distribution.

(Union Bag & Paper Co.)

Form 111.**Preference shares—cumulative :**

Should the surplus and net profits arising from the business of said corporation prior to any dividend day be insufficient to pay the dividend

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upon the preferred stock, such dividend shall be payable from future profits, and no dividend shall at any time be paid upon the common stock until dividends at the rate of seven per cent. per annum up to that time upon all the preferred stock shall have been paid or set apart.

The dividends upon the preferred stock shall be cumulative. After the dividend upon the preferred stock shall have been paid or set aside as aforesaid, the holders of the common stock shall be entitled to receive from the surplus and net profits arising from the business of said corporation, dividends of such amounts as shall be determined from time to time by the board of directors, and shall be payable at such time or times as shall be fixed by the by-laws.

The preferred stock is to have preference in the division of the assets to the extent of its par value in the winding up or dissolution of said corporation.

(Standard Distilling and Distributing Co.)

Form 112.**Preference shares—cumulative :**

The preferred stock shall be entitled, in preference to the common stock, to cumulative dividends at the rate of seven per centum yearly, payable quarterly, half-yearly, or yearly; that is to say, dividends may be paid upon the common stock only when the preferred stock shall have received dividends at said rate from the time of the issue thereof. The preferred stock shall also have a preference over the common stock in any distribution of assets other than profits until the full par value thereof and seven per centum per annum thereon from the time of issue shall have been paid by dividends or distribution. The preferred stock shall not receive any dividend from profits in excess of said seven per centum per annum, nor any share in distribution of assets in excess of said par value and the amount then unpaid of such cumulative dividends; but the common stock alone shall receive all further dividends and shares in distribution.

(American Steel Hoop Co.)

Form 113.**Preference shares—cumulative :**

The holders of such preferred stock shall be entitled to receive from the surplus or net profits arising from the business of said corporation a fixed yearly dividend of seven per cent. payable quarterly at such time or times as shall be fixed by the by-laws, before any dividend shall be set apart or paid on said common stock; should the surplus or net profits arising from the business of said corporation prior to any dividend day be insufficient to pay the dividend upon the preferred stock, such dividend shall be payable from future profits, and no dividend shall at any time be paid upon the common stock until dividends at the rate of seven per

cent. per annum up to that time upon all the preferred stock then issued and outstanding shall have been paid or set apart. The dividends upon the preferred stock shall be cumulative and shall not exceed seven per cent. per annum. After the dividend upon the preferred stock shall have been paid or set aside as aforesaid, the holders of the common stock shall be entitled to receive from the surplus or net profits arising from the business of said corporation, dividends of such amounts as shall be determined from time to time by the board of directors, and which shall be payable at such time or times as shall be fixed by the by-laws: The preferred stock is to have preference in the division of the assets to the extent of its par value in the winding up or dissolution of said corporation. The board of directors of said corporation shall have power from time to time to fix and change the amount to be reserved as a working capital.

(Kentucky Distilleries & Warehouse Co.)

Form 114.

Preference shares—cumulative:

That the total amount of the capital stock of said company is fifty million dollars, the number of shares into which the same is divided is five hundred thousand, and the par value of each share is one hundred dollars.

That of this amount one-half will be general stock and one-half preferred stock and that the holders of such preferred stock shall be entitled to receive from the surplus or net profits arising from the business of the corporation a fixed yearly dividend of seven per centum payable semi-annually on the 2d days of January and July in each year before any dividend shall be set apart or paid on the said general stock.

Should the surplus or net profits arising from the business of the corporation, prior to any dividend day, be insufficient to pay the dividend upon the preferred stock, such dividend shall be payable from future profits, and no dividend shall at any time be paid upon general stock until the full amount of seven per centum per annum up to that time upon all the preferred stock shall have been paid or set apart. The holders of preferred stock shall be entitled to no dividends beyond the seven per centum aforesaid.

(American Sugar Refining Co.)

Form 115.

Preference shares—cumulative:

The preferred stock shall be entitled, out of any and all surplus net profits, whenever ascertained, to cumulative dividends at the rate of eight per cent. per annum in each and every year hereafter, in preference and priority to any payment of any dividends on the common stock for such year. The common stock shall be subject to the prior rights of holders

**Form
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of the preferred stock as herein declared. If, after providing for the payment of full dividends for any year on the preferred stock, and for any balance that may remain due on the cumulative dividends on such preferred stock for preceding years, there shall remain any surplus net profits, any and all such surplus net profits not in the opinion of the board of directors required to provide for the maintenance, improvement, enlargement and operation of the property and business of the corporation, or for the payment of its liabilities, shall be applicable to dividends upon the common stock for such year, to the extent of but not exceeding eight per cent. upon the said common stock, when and as from time to time the same shall be declared by the board of directors; which dividends upon the common stock shall not be cumulative, but shall only be paid if earned. The remainder of any such surplus net profits shall then be applicable to the payment of further dividends equally per share upon both preferred and common stock. The board of directors may declare, and out of such surplus net profits may pay, annual dividends upon the common stock of the said corporation, to the extent of but not exceeding eight per cent. upon such common stock, but no such annual dividends shall be declared or paid until the cumulative dividends shall have been paid in full upon the preferred stock for such year, and for all preceding years; and after the payment of such cumulative dividends upon the preferred stock, and such dividends upon the common stock, to the amount of not exceeding eight per cent., out of any further surplus net profits the board of directors may declare and pay dividends equally per share upon preferred and common stock. In case of the dissolution or termination of the corporation, the preferred stock and the holders thereof shall also be entitled to preference in the distribution of the assets and property of the corporation, and any and all such assets and property in case of such dissolution, shall be applied first to the payment in full of the principal of the said preferred capital stock at par with all cumulative dividends thereon in preference and priority to any payment upon the common stock, and second, to the payment of the principal of the common stock at par; and any balance remaining shall be divided equally per share among the holders of preferred and common stock.

(Engineering Contract Company.)

Form 116.

Preference shares—cumulative:

The capital stock shall be of two classes: preferred stock and common stock. Ten million dollars of the capital stock shall be preferred stock, but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property.

The power to fix the amount to be reserved as a working capital for the corporation is hereby given to the directors, and the rights to dividends from profits shall be subject thereto, but no such working capital shall be accumulated until all dividends due on the preferred stock shall be paid.

**Form
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The preferred stock shall receive dividends at the rate of, and not exceeding, six per centum per annum. Such dividends shall be payable quarter yearly on the first day of July, October, January and April, and the first dividend representing the four months beginning March first, eighteen hundred and ninety-nine, shall be for two per cent., and shall be payable July first, eighteen hundred and ninety-nine. Such dividends shall be cumulative, and if the profits in any one year declarable as dividends shall not be sufficient to pay such dividends for such year upon said preferred stock, the same shall be made up from profits of a later period until the full amount of dividends herein specified, without interest, shall have been paid upon the preferred stock before any dividend is declared on the common stock. The amount of such annual dividend on the preferred stock shall in each year be reserved for such payment before any dividend shall be set apart or paid on the common stock.

The balance of the net profits of the company declarable as dividends shall be distributed among the holders of the common stock. The face value of the preferred stock and accrued and unpaid dividends shall in the event of the dissolution of the company, and division of its assets, be paid in full before any sum whatever shall be paid on account of the common stock, and thereafter the common stock shall be entitled to the entire assets remaining.

(Royal Baking Powder Co.; see also pp. 240-1, *post.*)

Form 117.

Preference shares—cumulative—amount not specified:

The amount of the total authorized capital stock of the corporation is eighteen million dollars; the number of shares into which the capital stock is divided is one hundred and eighty thousand, and the par value of each share is one hundred dollars. The amount of capital stock with which it will commence business is five thousand dollars, consisting of twenty-five shares of preferred stock and twenty-five shares of common stock.

From time to time the preferred stock and the common stock shall be issued in such amounts and proportion as shall be determined by the board of directors, and as may be permitted by law.

The holders of the preferred stock are entitled to cumulative dividends thereon at the rate of, but not exceeding, seven per centum for each and every fiscal year of the company, payable out of any and all surplus or net profits, semi-annually, when declared by the board of directors; and, in addition thereto, in the event of the dissolution or liquidation of the corporation, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares out of the assets of the corporation before anything shall be paid therefrom to the holders of the common stock.

The preferred stock shall be subject to redemption, at the option of the corporation, on the first day of June, 1901, or on the date of payment

**Form
118**

of any preferred stock dividend thereafter, at the price on one hundred and ten dollars for each share and the amount of dividend accumulated and unpaid thereon at the date of redemption.

No dividend shall be paid on the common stock until a dividend of seven per centum for each and every fiscal year of the company shall have been paid in full upon the cumulative preferred stock.

After providing for the payment of the cumulative dividends upon the preferred stock, all dividends which may be declared out of the surplus or net profits shall be payable to the holders of the common stock.

(Consolidated Street Car Co.)

Form 118.**Preference shares—two classes:**

The number of shares into which the said stock is divided is seventy-three thousand five hundred (73,500), of which twenty-one thousand (21,000) are first preferred stock of the par value of one hundred dollars (\$100) each; the holders of which stock shall be entitled to a cumulative dividend in each year of an amount equal to seven per cent. upon the amount actually paid in on said stock, payable from profits, if earned, and which shares, both as to dividends and as to the distributive share of the assets on the dissolution or winding up of the company, shall have preference over the common stock and over any other stock at any time issued. The stock certificates shall also contain a provision that no mortgage shall be placed on any property of the company except with the consent in writing of at least seventy per cent. of the holders of such first preferred stock of record on the books of the company.

Fifteen thousand seven hundred and fifty (15,750) shares of said stock shall be second preferred stock of the par value of one hundred dollars (\$100) per share; the holders of which shall be entitled to a non-cumulative dividend not to exceed six per cent. in any year, payable from profits after the payment of all accumulated dividends on the first preferred stock and before the payment of any dividend on the common stock, but no dividend shall be paid on the common stock in and for any year until six per cent. shall have been declared and paid in and for that year upon the second preferred stock.

Thirty-six thousand seven hundred and fifty (36,750) shares of said stock shall be common stock of the par value of one hundred dollars (\$100) per share; after said common stock shall have received a dividend of six per cent. in any year, all further dividends, if any be declared for such year, shall be apportioned and paid pro rata to the holders of the said second preferred and common stock according to the aggregate amount of the second preferred and common stock outstanding respectively.

(Spirits Distributing Co.)

Form 119.

Form
119**Founders' Shares:**

The total amount of the authorized capital stock of this company, which is dollars, consisting of shares of the par value of one hundred dollars (\$100) each, shall be divided and classified as follows: of the said stock,

 dollars shall be ordinary or common shares, and the balance, viz., dollars, are to be called "founders' shares," and are to confer on the holders thereof, ratably and in proportion to the number of founders' shares held by them respectively, the rights following, that is to say:

The right to one-fourth the surplus profits of the company of each year which shall remain after paying or providing for the payment out of such profits of a dividend for each share at the rate of six per cent. per annum on the whole capital, including both classes, issued and outstanding, and paid up, and after making due provisions for the reserve or surplus fund in accordance with the provisions hereinafter set forth.

The right to one-fourth of any part of the reserve fund aforesaid or the income thereof which it may at any time be determined to divide among all the stockholders.

The right to one-fourth of the surplus assets which in the winding up of the affairs of the company shall remain after paying off the whole of the paid-up capital.

Any of the shares of the capital, original or increased, may, pursuant to the statutes of New Jersey, be issued with any preferential, special, or qualified rights or conditions as regards capital, voting or otherwise attached thereto, with the consent of the holders of two-thirds of the said founders' shares issued and outstanding and not otherwise, and always so that the rights hereby attached to the founders' shares shall not be infringed.

The directors shall from time to time set aside the percentage on the surplus profits in that behalf mentioned in the next clause hereinafter contained as a reserve or surplus fund to meet liability or contingencies, or as working capital or for such other purpose as the directors shall in their absolute discretion think conducive to the interests of the company.

The profits of each year shall be applicable as follows:

(a) Of the profits, fifty per cent., each year to be carried to the reserve fund, together with a sum additional, if any, as the directors shall think proper (with the consent in writing of the holders of two-thirds of the founders' shares) which reserve fund may in the absolute discretion of the directors be applied to the purchase and acquisition of property real and personal, and to the purchase and acquisition of its own capital stock, and may take said capital stock in payment or satisfaction of any debt due the company from time to time and to such extent and in such manner and upon such terms as its board of directors shall determine, and it may reissue said stock so acquired.

Neither said surplus fund nor the property, nor the capital stock so

**Form
120**

purchased and acquired, nor any of its capital taken in payment or satisfaction of any debt due to the company, shall be regarded as profits for the purpose of the declaration or payment of dividends unless a majority of the board of directors, or the holders of a majority of all the stock then issued and outstanding, shall otherwise determine.

The unused balance of said reserve fund shall, after the close of each year, be retained in said reserve fund until such reserve fund shall be equal to the capital stock for the time being paid up and outstanding.

(b) To the payment of dividend or dividends to the close of such year on all the stock of the company of both classes issued and outstanding, as hereinbefore provided.

There shall be seven directors of the company, divided into two classes in respect to the time for which they shall severally hold office.

The first class, composed of four members, shall be chosen exclusively by the holders of the founders' shares for the time being, and shall hold their offices for the term of two years, and until the election of their successors, and the second class, composed of three members, shall be chosen exclusively by the holders of the general or common stock for the time being, and shall hold their offices for the term of one year and until the election of their successors. The successors of the directors of said two classes respectively shall be chosen by the holders of the founders' shares and by the holders of the general or common shares as aforesaid, so that four of the directors shall at all times be chosen by the holders of the founders' shares and three of the directors be chosen by the holders of the general or common shares.

(Sargent Automatic Railway Signal Co.)

[For additional stock preference clauses, see the charters of the Federal Steel Co., National Steel Co., and American Ship Building Co., pp. 242 to 258, *post.*]

Form 120.**Deferred stock debentures:**

Upon the vote of a majority of the preferred and common stock issued and outstanding, irrespective of class, the directors shall have the power to create deferred stock debentures which shall be subordinate to the common and preferred stock, both as to dividends and the principal, so that the said deferred stock debentures shall not be entitled to any dividend or interest whatever until after both preferred and common stock shall have in any one year received, or had set apart for payment, a dividend at the rate of six per cent. per annum, and after the payment of a dividend of six per cent. in any year to the stock, preferred and common, a dividend at the rate of but not exceeding six per cent. shall be paid to the holders of the said deferred stock debentures, but it shall not be entitled in any one year to any further dividend or interest. In the event of liquidation or dissolution of the company, the common and preferred stock shall be paid in full before any payment shall be made upon the said deferred stock debentures. Said deferred stock debentures shall

have no voting power. The deferred stock debentures shall always be subordinate also to the claims of general creditors of the company.

**Forms
121-124**

CLAUSES REGULATING BUSINESS, &c.

The certificate of incorporation may contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stockholders. (Section 8, subdv. VII., p. 16. *ante*.) These clauses may be greatly varied.

Form 121.

Directors and officers not subject to removal:

Neither the directors nor the members of the executive committee nor the president or vice-president shall be subject to removal during their respective terms of office, by the stockholders or otherwise, nor shall their terms of office be diminished during their tenure.

Form 122.

Directors to sell property on request of majority of stockholders:

The directors shall at any time sell or dispose of all or any part of the real estate, personal property or other assets of any kind or nature, that may be owned by the company on the request of a majority of all the stockholders, preferred and common, to be evidenced by a vote at a meeting called on two weeks' notice, or by a writing under the signature of a majority of said stockholders. Said sale shall be made for cash or in exchange for other property as may be directed by said stockholders.

Form 123.

Power to directors to make and alter by-laws:

The board of directors shall have power, without the assent or vote of the stockholders, to make, alter, amend and repeal by-laws for the corporation, but the by-laws shall always provide for notice of the objects of any special meeting of stockholders; to fix the amount to be reserved as working capital; to authorize and cause to be executed mortgages and liens upon the property of the corporation; and from time to time to sell, assign, transfer or otherwise dispose of any or all of its property, but no sale of all its property shall be made except upon the vote of the holders of a majority of stock.

Form 124.

Examination of books by stockholders:

The board of directors from time to time shall determine whether, and to what extent, and at what times and places, and under what condi-

**Forms
125-127**

tions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the board of directors, or by a resolution of the stockholders.

Form 125.**Limitation on right of stockholders to examine books :**

No stockholder or stockholders holding less than forty per cent. of the total stock issued shall be entitled to an examination of the books of account or documents, or papers, or vouchers of this company, except by a resolution of the board of directors giving such privilege, and an examination shall then be had only at the time and place, in the manner, to the extent and by the person named in such resolution of the board of directors, excepting always from this restriction such corporate records as are, by statute, open to the inspection of stockholders.

This restriction shall not be construed to limit the right or power of any director or officer of the corporation to examine the books, papers, or vouchers of the said corporation.

Form 126.**Classification of directors :**

The directors of said corporation shall be classified, in respect to the time for which they shall severally hold office, into five classes. The first class shall be elected for a term of five years; the second class shall be elected for a term of four years; the third class shall be elected for a term of three years; the fourth class shall be elected for a term of two years; the fifth class shall be elected for a term of one year; and at each annual election after the first, the successors to the class of directors whose term expires in that year shall be elected to hold office for the term of five years, so that the term of office of at least one class shall expire in each year.

Form 127.**Classification of directors :**

The directors shall be divided as equally as may be into five classes. The seats of the directors of the first class shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; of the third class, at the expiration of the third year; of the fourth class, at the expiration of the fourth year, and of the fifth class, at the expiration of the fifth year, so that one-fifth may be chosen every year.

Form 128.**Classification of directors :**

The total number of directors shall be divided into three classes, each consisting of such number of members as may from time to time be fixed by the directors. The members of one class only shall retire each year, but no retirement of any class shall take place before the annual meeting in January, 1899, and the successors of those retiring shall be chosen at the annual meeting of stockholders.

The board of directors first chosen shall decide as to the rotation or order of retirement of said classes, and thereafter the order so fixed shall be kept so that after the annual meeting in January, 1900, each class shall continue in office for three years from its appointment, unless the stockholders at any annual meeting shall otherwise determine.

[For other forms of clauses classifying directors, see *form 119, ante*, and p. 250, *post*.]

Form 129.**Limitation on liability of original subscribers :**

The subscribers hereto, and each other subscriber for the stock of the company, shall at all times be liable for the purchase price of the stock for which he subscribed until ten per cent. of the par value thereof has been paid thereon, but after the payment of said ten per cent. the subscriber shall no longer be liable for any unpaid part of his subscription excepting upon such shares as shall stand of record on the books of the company in the subscriber's name at the time a call or assessment is made; but the holders of such shares of record on the books of the company, and they only, shall be liable for the same.

Form 130.**Reservation of right to change provisions of certificate of incorporation :**

The rights conferred upon stockholders in paragraphs Nos. _____ to _____ are subject to the reservation that the company may change, modify or amend the same, or any of them, as provided by law.

[See Section 27; *Pronik v. Spirits Distributing Co.*, 42 Atl. Rep., 586.]

Form 131.**Power reserved to create preferred stock :**

The company shall have power, on any increase of the capital of the company over one hundred thousand dollars, to create two or more kinds of stock of such classes, with such designations, preferences and voting powers or restriction or qualification thereof as shall be lawfully prescribed in any resolution at a general meeting, passed by the holders of a majority in interest, being not less than two-thirds of the total capital stock of the company, present in person or by proxy in such meeting, provided that at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital of the company.

**Forms
132-134****Form 132.****Rights of shareholders on increase of capital stock :**

The board of directors may, before the issue of any new shares of the capital stock, determine that the same, or any part thereof, shall be offered in the first instance to all of the then shareholders, in proportion to the amount of the capital stock held by them, or make any other provision as to the issue and allotment of the new shares; but in default of any such determination, or so far as the same shall not extend, the new shares may be dealt with as if they formed part of the shares in the original capital stock of the company.

Form 133.**Limitation on power to issue preferred stock :**

No preferred stock shall be issued by the corporation nor shall any mortgage or bonded indebtedness (except as hereinafter provided) be created by it except after first obtaining the consent of the holders of eighty-five per centum (85%) of all the issued and outstanding capital stock of the corporation; which consent shall be given in writing or by vote at a meeting of the stockholders: *Provided, however,* that the board of directors shall have power, without any such consent of stockholders, at any time or times within five years from the first day of May, one thousand eight hundred and ninety-nine, to issue bonds of the corporation to an amount not exceeding in the aggregate two million dollars (\$2,000,000) payable in not more than twenty (20) years from the date of the issue thereof and to secure the payment of such bond by the execution and delivery of a mortgage upon all the assets and franchises of the corporation owned by it at the time of the execution of such mortgage or that it may thereafter acquire, and further provided that the board of directors shall have power without any such consent of stockholders, at any time or times, to execute and deliver purchase-money mortgages covering specific properties that may be purchased by the corporation.

Form 134.**Specific authority to directors to issue bonds :**

The directors and officers of the said company are authorized to issue fifteen thousand (15,000) first mortgage bonds of one thousand dollars (\$1,000) each, payable on the first day of May, in the year 1939, in gold, bearing six per cent. interest, payable likewise in gold semi-annually at the agency of the company in the City of New York, and to secure said bonds by a conveyance by way of mortgage of all the franchises belonging to the company, and such part of its property, real and personal, as the directors may deem advisable. This authority is not to be construed as a limitation against the issue of other bonds secured or unsecured by mortgage.

Form 135.**Limitation on power to create mortgages :**

No mortgage shall be created by the company unless there shall be first obtained the consent in writing of the holders of seventy-five per cent. of the preferred stock outstanding at the time, and also the like consent of holders of seventy-five per cent. of the outstanding common stock.

Form 136.**Limitation on power to create mortgages :**

That the company may create and issue its debentures to the amount of ten million dollars, and no bond, no debenture other than those above mentioned, and no mortgage shall be made, assumed or guaranteed by the company, or by any company, a majority of the capital stock of which may be owned or controlled by this company, without the consent of the holders of record of eighty per centum of the preferred stock of this company then outstanding.

Form 137.**Limitation on power to create mortgages :**

The corporation shall not issue bonds or execute any mortgage or chattel mortgage upon its property or franchises without the consent of the stockholders owning at least ninety per cent. of the preferred stock of the corporation, which consent shall either be in writing and be filed in the office of the corporation, or shall be given by a vote at a stockholders' meeting called for the purpose.

Form 138.**Limitation on power to create mortgages :**

The officers of the corporation shall have no power to mortgage its real property other than by purchase-money mortgage on the acquisition of additional property and covering only the property so additionally acquired, except upon compliance with subdivision " " of the " " paragraph hereof, and upon the consent in writing first obtained of the holders of a majority of the issued preferred stock hereinafter described, or upon the affirmative vote of a majority of the holders of the said preferred stock at a meeting called for that purpose, and upon such consent so obtained, or upon such affirmative vote so had, and upon further compliance with the conditions of subdivision " " of the " " paragraph hereof, and not otherwise, the corporation shall have full power to mortgage all or any part of its real property to secure an issue of bonds, or otherwise.

**Forms
139-140****Form 139.****Limitation on power to create mortgages:**

The corporation shall not have power to mortgage its real property or any part thereof, nor to create any lien, by way of mortgage or otherwise, upon its plant and machinery used in its business of manufacturing, except upon the assent in writing first obtained of the holders of two-thirds of the entire capital stock issued and outstanding, or upon the affirmative vote of the holders of a majority of the entire capital stock, issued and outstanding, at a meeting of the stockholders duly called for that purpose. Upon such assent so obtained, or upon such affirmative vote so had, and not otherwise, the directors shall have power to mortgage the said real property, plant and machinery of the corporation, or any part thereof, to secure an issue of bonds or otherwise.

Form 140.**Limitations on voting power of preferred stock:**

[The following provisions are taken from the certificate of incorporation of the Royal Baking Powder Co., and illustrate the great latitude which incorporators are allowed in regulating the internal affairs of the corporation. The obvious purpose here was to put every safeguard around the preferred stock and to insure the payment of dividends, if earned.]

So long as the dividends reserved on said preferred stock shall be paid as and when the same are by this instrument provided to be paid, the holders of the preferred stock shall have no voting power on any question. In the event, however, that any dividend due on the preferred stock shall not be paid when payable hereunder and shall remain so unpaid for a period of four months, then a special meeting of the stockholders of the company shall be called at the request of any preferred stockholder or stockholders owning preferred stock of the par value of fifty thousand dollars (\$50,000), which meeting shall be convened on ten days' notice by mailing a copy of such notice to each preferred stockholder of record at the time such notice is mailed to his address as the same appears at the time upon the preferred stock ledger hereinbelow mentioned, and at such meeting, if said dividend still remain unpaid, the holders of a majority of the preferred stock, present or represented at said meeting, shall be entitled to elect a new board of directors of the company, and the voting power theretofore vested exclusively in the common stock of the company shall for the time being wholly cease.

The election of the new board of directors in the manner hereinabove specified shall terminate the term of office of each member of the existing board of directors elected by the common stockholders. Thereafter and until all arrearages of dividends shall have been paid, or accumulated as hereinafter provided, upon the preferred stock, the voting power theretofore vested exclusively in the common stock shall vest and remain in the holders of the preferred stock. One month after the payment of all defaulted dividends upon the preferred stock or the accumulation of net earnings equal to said defaulted dividends, the voting power

then vested exclusively in the preferred stock shall cease, and such exclusive voting power shall be restored to the holders of the common stock and a new board of directors may be elected by such exclusive vote of the common stock, at a meeting duly called and held as above provided, concerning any meeting following a default in the payment of dividends on the preferred stock, save only that notice thereof shall be given alone to the holders of the common stock, and, such meeting being held and such new board being elected, the term of office of each director elected by the vote of the preferred stock shall at once expire.

During any period of time that the corporation shall be managed by a board of directors elected by the preferred stockholders, the books of account showing the business and earnings of the said corporation shall be open at all reasonable times, not oftener than once in three months, to the inspection and examination of the owners of a majority of the common stock.

The by-laws of the corporation shall contain provisions consistent with the foregoing, and the portion of said by-laws so providing shall not be subject to amendment or change, save by the assent in writing of at least two-thirds of all the outstanding shares of the preferred stock and also by the vote of at least two-thirds of all outstanding shares of the common stock of the company.

No mortgage shall be created or assumed by the company, nor shall any class of its capital stock now or hereafter existing other than its common stock, be increased, nor shall said company be merged into or consolidated with any other company, unless (in the event that the company at the time be managed by a board of directors elected by the holders of the common stock) there shall be first obtained the consent in writing of the holders of seventy-five per cent. of the preferred stock outstanding at the time, or unless (in the event that at such time the company shall be managed by a board of directors elected by the holders of the preferred stock) the like consent shall be first obtained of the holders of seventy-five per cent. of the common stock.

The foregoing provisions shall be construed as limitations upon the voting power of the holders of the capital stock of the company (no voting power whatever on any question being vested in the holders of the preferred stock, except as hereinabove provided), any future law of the state of New Jersey in anywise to the contrary notwithstanding, said provisions having been agreed upon between the parties to these presents as constituting conditions precedent to the organization of said company.

Form 141.

Cumulative voting :

Every holder of one or more shares of stock shall be entitled to one vote for each share at all meetings of the stockholders, and in any election of directors shall be entitled to cumulate his votes upon one or more directors. The holders of preferred and common stock shall have an equal power of voting.

**Forms
142-145****Form 142.****Cumulative voting:**

The by-laws shall provide that at all elections of directors each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director, or distribute them among the number to be voted for, or any two or more of them, as he may see fit.

Form 143.**Executive committee:**

The board of directors, by resolution passed by a majority of the whole board, may designate three directors to constitute an executive committee, which committee, to the extent provided in said resolution or in the by-laws of the corporation, shall have, and may exercise the power of the board of directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

Form 144.**Executive committee:**

The board of directors may designate two of their number, who, with the treasurer, shall constitute an executive committee, which committee shall, for the time being, to the extent provided by the by-laws of the company, have and exercise the powers of the board of directors in the management of the business and affairs of the company, and shall have power to authorize the seal of the company to be affixed to all papers which may require it.

[For further and more elaborate clauses providing for executive committee, see pp. 251-2, *post.*]

Form 145.

**CERTIFICATE OF INCORPORATION OF FEDERAL STEEL
COMPANY.**

[Internal revenue stamp, 10c., canceled.]

REGISTERED OFFICE WITH THE CORPORATION TRUST COMPANY OF NEW
JERSEY, 60 GRAND STREET, JERSEY CITY, N. J.

FIRST.—The name of the corporation is

“FEDERAL STEEL COMPANY.”

SECOND.—The location of its principal office in the State of New Jersey is at No. 60 Grand street, in the City of Jersey City, County of Hudson. Said office is to be registered with THE CORPORATION TRUST

COMPANY OF NEW JERSEY. The name of the agent therein and in charge thereof, and upon whom process against this corporation may be served, is The Corporation Trust Company of New Jersey.

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THIRD—The objects for which, and for any of which, the corporation is formed, are to do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world, viz.:

Mining of all kinds; manufacturing of all kinds; transportation of goods, merchandise or passengers, upon land or water; building houses, structures, vessels, ships, boats, railroads, engines, cars or other equipment, wharves or docks; constructing, maintaining and operating railroads (other than railroads within the State of New Jersey), steamship lines, vessel lines, or other lines for transportation; the purchase, improvement or sale of lands;

To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise, and property of every class and description;

To acquire and undertake all or any part of the business, assets and liabilities of any person, firm, association or corporation;

To apply for, purchase, or otherwise acquire, and to hold, own, use, operate and to sell, assign, or to otherwise dispose of, to grant licenses in respect of or otherwise turn to account any and all inventions, improvements and processes used in connection with, or secured under letters patent of the United States or elsewhere, or otherwise; and, with a view to the working and development of the same, to carry on any business, whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects;

To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation;

To have one or more offices; to carry on all or any of its operations and business; and unlimitedly and without restriction to hold, purchase, mortgage, lease and convey real and personal property in any state or territory of the United States, and in any foreign country or place.

In general to carry on any other business in connection therewith, whether manufacturing or otherwise, with all the powers conferred by the laws of New Jersey upon corporations under the act hereinafter referred to.

FOURTH.—The total authorized capital stock of the corporation is two hundred million dollars (\$200,000,000), divided into two million (2,000,000) shares of the par value of one hundred dollars (\$100) each.

Of such total authorized capital stock, one million shares, amounting to \$100,000,000, shall be preferred stock, and one million shares, amounting to \$100,000,000, shall be common stock.

From time to time the preferred stock and the common stock shall

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be issued in such amounts and proportion as shall be determined by the board of directors, and as may be permitted by law.

The preferred stock shall be entitled, out of any and all surplus net profits, whenever declared by the board of directors, to non-cumulative dividends at the rate of, but not exceeding, six per cent. per annum for the fiscal year beginning on the first day of January, 1899, and for each and every fiscal year thereafter, payable in preference and priority to any payment of any dividend on the common stock for such fiscal year. In addition thereto, in the event of the dissolution of the corporation, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares out of the surplus funds of the corporation before anything shall be paid therefrom to the holders of the common stock.

The common stock shall be subject to the prior rights of the holders of the preferred stock, as herein declared. If, after providing for the payment of full dividends for any fiscal year on the preferred stock, there shall remain any surplus net profits of such year, any and all such surplus net profits of such year, and of any other fiscal year for which full dividends shall have been paid on the preferred stock, shall be applicable to dividends upon the common stock, when and as from time to time the same shall be declared by the board of directors and out of any such surplus net profits, after the close of any fiscal year, the board of directors may pay dividends upon the common stock of the corporation for such fiscal year, but not until after the dividends upon the preferred stock for such fiscal year shall have been actually paid or provided and set apart.

FIFTH.—The names of the incorporators (the post-office address of each is No. 60 Grand street, Jersey City, N. J.) and the number of shares of common stock (ten) subscribed for by each, the aggregate of which being three thousand dollars (\$3,000), is the amount of capital stock with which the corporation will commence business, are as follows:

NAME.	
CHARLES C. CLUFF,	Ten Shares Common Stock.
CHARLES MAC VEIGH,	Ten Shares Common Stock.
BENJAMIN C. VAN DYKE,	Ten Shares Common Stock.

SIXTH.—The duration of the corporation shall be unlimited.

SEVENTH.—The corporation may use and apply its surplus earnings, or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration

or payment of dividends, unless otherwise determined by a majority of the board of directors, or a majority of the stockholders.

The corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number.

The number of directors at any time may be increased by vote of the board of directors, and in case of any such increase the board of directors shall have power to elect such additional directors, to hold office until the next meeting of stockholders, or until their successors shall be elected.

[See p. 32, *ante*.]

The board of directors shall have power without the assent or vote of the stockholders to make, alter, amend and rescind the by-laws of the corporation, to fix the amount to be reserved as working capital, to authorize and to cause to be executed mortgages and liens upon the real and personal property of the corporation; and from time to time to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation, but no such sale of all of the property shall be made except pursuant to the vote of at least two-thirds of the board of directors.

[The directors are given unrestricted power to mortgage. See p. 4, *ante*.]

The board of directors, by resolution passed by a majority of the whole board, may designate three or more directors to constitute an executive committee, which committee, to the extent provided in said resolution or in the by-laws of the corporation, shall have, and may exercise, the power of the board of directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The board of directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the board of directors, or by a resolution of the stockholders.

The board of directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of this state, at such places as may be from time to time designated by them.

It is the intention that the objects above specified in Article Third, except where otherwise expressed in said article, shall be nowise limited or restricted by reference to, or inference from, the terms of any other article, clause or paragraph in this certificate.

The undersigned, for the purpose of forming a corporation in pursuance of an act of the legislature of the State of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto, do make, record and file

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this certificate, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly hereunto have set our hands and seals.

Dated Jersey City, N. J., September 9, 1898.

In presence of

JAMES B. DILL,

CHAS. C. CLUFF,

[Seal.]

E. H. GARY,

CHARLES MACVEAGH,

[Seal.]

FRANCIS LYNDE STETSON,

BENJAMIN C. VAN DYKE.

[Seal.]

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

Be it remembered that on this ninth day of September, A. D. eighteen hundred and ninety-eight, before the undersigned personally appeared Charles C. Cluff, Charles MacVeagh and Benjamin C. Van Dyke, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and I, having first made known to them, and each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

JAMES B. DILL,

Master in Chancery of New Jersey.

(10-cent internal revenue stamp canceled.)

Form 146.

CERTIFICATE OF INCORPORATION OF THE NATIONAL STEEL COMPANY.

[Internal Revenue Stamp, 10c., canceled.]

REGISTERED OFFICE WITH THE NEW JERSEY REGISTRATION AND TRUST
COMPANY, EAST ORANGE, N. J.

FIRST.—The name of the corporation is

“NATIONAL STEEL COMPANY.”

SECOND.—The location of its principal office in the State of New Jersey is at No. 525 Main street, in East Orange, County of Essex, and is to be registered with the NEW JERSEY REGISTRATION AND TRUST COMPANY. The said trust company is the agent therein and in charge thereof, and upon whom process against this corporation may be served.

THIRD.—That the objects for which, and for each of which, this corporation is formed are:

To manufacture, buy, sell, deal in and deal with steel or iron, or both, and all like or kindred products, to mine, manufacture, prepare for market, market and sell the same, and any articles or product in the manufacture or composition of which metal is a factor; including the acquisition by purchase, mining, manufacture or otherwise of all materials, supplies and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

To build, construct, repair, maintain and operate water, gas or electrical works, tunnels, bridges, viaducts, canals, wharves, piers and (outside of the State of New Jersey) railroads and any like works of internal improvement or public use or utility.

IN FURTHERANCE, and not in limitation, of the general powers conferred by the laws of the State of New Jersey, and of the objects and purposes as herein above stated, it is hereby expressly provided that the company shall have also the following powers, that is to say:

[The distinction between objects and powers (see section 8, sub. div. VII., pp. 16 *et seq.*, *ante*) is thus clearly noted. While the objects are briefly defined, the powers are broad and comprehensive.]

(a) To do any or all of the things herein set forth as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise.

(b) To conduct its business in all its branches and have one or more offices, and unlimitedly to hold, purchase and convey real and personal property, both within and without the State of New Jersey, and in all other states, territories and colonies of the United States, and in all foreign countries and places.

(c) To manufacture, purchase, or otherwise acquire, hold, own, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description, and to do both mining and manufacturing of any kind.

(d) To purchase or otherwise acquire, to hold, own, maintain, work, mine, develop, to sell, convey, or otherwise dispose of, without limit as to amount, within or without the State of New Jersey, and in any part of the world, real estate and real property, and any interest and rights therein.

(e) To acquire the good-will, rights and property of all kinds, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporation, bonds or otherwise.

(f) To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, introduce and sell, assign, or otherwise dispose of, any and all trademarks, trade names and distinctive marks, and all inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trademarks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and with a view to the working and development of the same, to carry on any business, whether mining, manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

(g) To hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock,

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bonds, or other evidences of indebtedness created by other corporation or corporations, and while the holder of such stock to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

(*h*) To purchase, lease, exchange, hire or otherwise acquire, any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of its business, to erect and construct, make, improve, or aid or subscribe towards the construction, making and improvement of, mills, factories, storehouses, buildings, roads, docks, piers, wharves, houses for employees and others, and works of all kinds; and in conjunction with and in furtherance of the general business and purposes of the corporation, as above described, to construct, lease, own, operate or sell a railroad or railroads, or both, in any state or country other than the State of New Jersey, subject to the laws of such other state or country, either directly or through the ownership of stock of a corporation formed or to be formed for the purpose under the laws of such other state or country.

(*i*) To guarantee the payment of dividends or interest on any shares, stocks, debentures or other securities issued by, or any other contract or obligation of, any corporation whenever proper or necessary for the business of this corporation in the judgment of its directors, or the executive committee.

(*j*) To make and enter into contracts of every sort and kind with any individual, firm, association, corporation, private, public or municipal, body politic, and with the Government of the United States, or any state, territory or colony thereof.

(*k*) To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holders of or interested in any property, and in general to carry on any business, whether manufacturing, mining or otherwise.

It is the intention that the objects, purposes and powers specified and clauses contained in this third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

FOURTH.—The total amount of capital stock of said corporation is to be fifty-nine million dollars (\$59,000,000), divided into five hundred and ninety thousand (590,000) shares of one hundred dollars (\$100) each. Of the said stock two hundred and seventy thousand (270,000) shares, amounting at par to twenty-seven million dollars (\$27,000,000), are to be preferred stock, and three hundred and twenty thousand (320,000) shares, amounting at par to thirty-two million dollars (\$32,000,000), are to be common stock.

The rights, privileges and conditions following shall attach to the shares aforesaid, that is to say :

(1) The common stock shall be subordinate to the rights of the preferred stock, except that both preferred and common stock shall have equal voting powers.

(2) The corporation shall not be at liberty, without the consent in writing first obtained of the holders of two-thirds in amount of the preferred stock issued and outstanding—

(a) To create or issue any other or further shares ranking in any respect *pari passu* with or in priority to the aforesaid issue of \$27,000,000 of preference shares ;

(b) Nor to create any charge, except as herein provided, upon the net profits of the corporation which shall not be subordinate to the rights of the preference shares ;

(c) Nor to reserve a surplus fund which shall not be chargeable with the payment of the accrued dividends on the preference shares.

[These three provisions, taken in connection with the prohibition against the creation of mortgages by the directors (see p. 250, *note*), throw strong safeguards around the preferred stock and tend to take it from the power of the directors to withhold dividends.]

(3) The said preference shares shall carry a fixed cumulative preferential dividend at the rate of, *but never exceeding*, seven per cent. (7%) per annum on the par value thereof, and such dividends shall be declared quarterly on the second days of January, April, July and October in each year, or at such other times as the board of directors or the executive committee shall see fit and determine.

[A very clear way of limiting the dividends on the preferred stock.]

If in any year dividends amounting to seven per cent. (7%) per annum shall not be paid on such preferred stock, the deficiency shall be a charge on the net profits and be payable, but without interest, before any dividends shall be paid upon or set apart for the common stock.

(4) The balance of the net profits of the corporation, after the payment of said cumulative dividend at the rate of seven per cent. (7%) per annum to the holders of the preferred stock, may be distributed as dividends among the holders of the general or common stock, as and when the board of directors or the executive committee shall in their discretion determine.

(5) In the event of the liquidation or dissolution of the corporation the surplus assets and funds thereof shall be applied in the first place in repaying to the holders of the aforesaid cumulative preference shares the full amount of the principal thereof and the accrued dividends, if any, charged, before any amount shall be paid upon the common stock, and after such payment in full to the holders of said cumulative preference

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shares, the surplus assets and funds shall belong to and be divided among the holders of the other shares.

[Under this provision, in case of a surplus on liquidation the preferred stock will receive its par and accrued dividends only. The balance of such surplus, if any, would be divided among the holders of the common stock.]

From time to time the preferred and common stock may be issued in such amount and proportion as shall be determined by the board of directors, in accordance with the laws of the State of New Jersey.

FIFTH.—The directors of the corporation shall be divided in respect to the time for which they shall severally hold office into five classes equal in number. The first class shall be elected for a period of five years, the second class for a period of four years, the third class for a period of three years, the fourth class for a period of two years, and the fifth class for a period of one year; and at each annual election after 1899, the successors to the class of directors whose terms expire in such year shall be elected to hold office for five years, so that the term of office of at least one class shall expire in each year.

In case of an increase in the board of directors between the annual election by the stockholders, the newly created directorships shall be and be construed as vacancies until the next annual election to be filled forthwith by the board.

[Inserted in view of the decision in *re A. A. Griffing Iron Co.*, 41 Atl. Rep., 931; see p. 32.]

SIXTH.—The names and the post-office address of the incorporators, and the number of shares of common stock subscribed for by each, the aggregate of which (\$10,000) is the amount of capital stock with which this corporation will commence business, are as follows: (*Here follow names and post-office addresses of incorporators and number of shares subscribed by each.*)

SEVENTH.—The duration of the corporation is to be perpetual.

EIGHTH.—1. The corporation shall have no power to mortgage its real property, except upon the assent in writing first obtained of the holders of two-thirds of the issued preferred stock hereinbefore described, or upon the affirmative vote of the holders of a majority of the said preferred stock at a meeting of the preferred stockholders duly called for that purpose, and upon such assent so obtained, or upon such affirmative vote so had, and not otherwise, the corporation shall have power to mortgage its real property to secure an issue of bonds or otherwise.

[All power to create mortgages on the real property is taken from the directors, thus preserving the integrity of the preferred stock as an investment security.]

2. The board of directors shall have power without the assent or vote of the stockholders to make, alter, amend and rescind the by-laws of this corporation, and, subject always to the payment of the dividends on the preferred stock, to fix the amount to be reserved as working capital.

3. With the assent in writing or pursuant to the vote of the holders

of two-thirds of all the stock irrespective of class issued and outstanding, the directors shall have power and authority to sell, assign, transfer, convey or otherwise dispose of the property and assets of this corporation as an entirety on such terms and conditions, and for such consideration, as the directors shall deem fit, right and just.

4. The board of directors, and when the board is not in session the executive committee, in addition to the powers and authorities by statute and by the by-laws expressly conferred upon them, are hereby empowered to exercise all such powers, and to do all such acts and things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the statute, of the charter, and to any regulations that may from time to time be made by the stockholders; *provided*, that no regulations so made shall invalidate any provisions of this charter, or any prior acts of the directors or executive committee which would have been valid if such regulations had not been made.

[Thus putting the whole power of the corporation in the directors excepting as otherwise provided in the certificate or by statute.]

5. There shall be an executive committee of seven members, who shall be elected by the stockholders from the directors, and hold office as hereinafter provided. The said committee shall have and exercise all the powers expressly conferred upon it by this certificate of incorporation, and also all the powers of the board of directors whenever a quorum shall fail to be present at any stated or other meeting of the board, and as well at all times whenever the board shall not be in session, and shall have power to affix the seal of the corporation to all papers which they may deem to require it.

[The executive committee thus virtually controls the affairs of the corporation.]

The committee shall have power to make rules and regulations for the conduct of its business, and to determine how many members thereof shall constitute a quorum.

The officers of the committee shall be a chairman, a vice-chairman and a secretary, who shall hold office during the term of their office as members of the committee, and shall be elected by the stockholders.

At all meetings of the committee all questions shall be decided by a majority of votes, and in case of an equality of votes, the chairman, and in his absence the vice-chairman, and in the absence of both the secretary shall have a second and deciding vote.

The stockholders shall, at their first meeting, elect by ballot the said committee of seven members from the directors elected at such meeting, and the said officers thereof.

The stockholders shall determine and fix the compensation to be paid to the members of the committee and to any of the officers thereof as such, and the compensation of any member or officer of the committee, so fixed, shall not be diminished during his tenure.

At every annual meeting after the first meeting, whenever the term of office of any member or officer of the committee shall expire, the stock-

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holders shall elect a successor. Any member of the committee may be elected to succeed himself.

Any director, irrespective of class, is eligible to election as a member of the executive committee.

The term of office of each member of the committee shall be co-extensive with the term of his office as director, unless the stockholders at the time of his election shall fix a shorter period or term of office, which they shall have power to do. Any member of the committee who shall cease to be a director of the company shall *ipso facto* cease to be a member of the committee.

Neither the directors nor the members of the executive committee nor the president nor vice-president shall be subject to removal during their respective terms of office, nor shall their terms of office be diminished during their tenure.

All vacancies in the executive committee shall be filled for the unexpired term from the directors by the remaining members of the committee.

6. The directors shall from time to time determine whether, and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account, or book, or document of the corporation, except as conferred by statute of New Jersey or authorized by the directors.

7. The directors shall have power to hold their meetings, to have one or more offices and to keep the books of the corporation (except the stock and transfer books) outside of this state, at such places as may from time to time be designated by them.

THE UNDERSIGNED, for the purpose of forming a corporation in pursuance of an act of the legislature of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto, do make, record and file this certificate, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly hereunto set our hands and seals.

Dated, East Orange, N. J., February 24th, 1899

(Here follow the signatures of the incorporators and the acknowledgment.)

Form 147.

CERTIFICATE OF INCORPORATION OF THE AMERICAN SHIP BUILDING COMPANY.

[Internal revenue stamp, 10c., canceled.]

REGISTERED OFFICE WITH THE CORPORATION TRUST COMPANY OF NEW
JERSEY, 60 GRAND STREET, JERSEY CITY, N. J.

FIRST.—The name of the corporation is

"THE AMERICAN SHIP BUILDING COMPANY."

SECOND.—The location of its principal office in the State of New Jersey is at No. 60 Grand street, in the City of Jersey City, County of

Hudson. Said office is to be registered with THE CORPORATION TRUST COMPANY OF NEW JERSEY. The name of the agent therein and in charge thereof, and upon whom process against this corporation may be served, is The Corporation Trust Company of New Jersey.

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THIRD.—The objects for which, and for any of which, the corporation is formed, are :

To build, make, operate, maintain, buy, sell, deal in and with, own, lease, pledge and otherwise dispose of ships, vessels and boats of every nature and kind whatsoever, together with all materials, articles, tools, machinery and appliances entering into, or suitable and convenient for, the construction or equipment thereof, and together with engines, boilers, machinery and appurtenances of all kinds and tackle, apparel and furniture of all kinds.

The transportation of goods, merchandise and passengers upon land or water, building, repairing and designing houses, structures, vessels, ships, boats, wharves, docks, dry docks, railroads, engines, cars, machinery and all other equipment ; constructing, maintaining and operating railroads (other than railroads within the State of New Jersey).

To build, construct, repair, maintain and operate water, gas or electrical works, tunnels, bridges, viaducts, canals, wharves, piers and like works of internal improvement or public use or utility ; to own, operate and maintain steamship lines, vessel lines, or other lines for transportation ;

The purchase, improvement, or sale of lands ;

Manufacturing of all kinds ; mining of all kinds ;

In general, to carry on any other business in connection therewith, whether manufacturing or otherwise, with all the powers now or hereafter conferred by the laws of New Jersey upon corporations under the act hereinafter referred to.

IN FURTHERANCE, and not in limitation, of the general powers conferred by the laws of the State of New Jersey, and of the objects and purposes as herein above stated, it is hereby expressly provided that the corporation shall have also the following powers and purposes, that is to say :

(a) To do any or all of the things herein set forth as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise.

(b) To have one or more offices ; to carry on all, or any part of its operations and business and unlimitedly and without restriction to hold, purchase, mortgage, lease and convey real and personal property and to conduct its business in any state or territory of the United States, and in any foreign country or place ; but subject always to the laws thereof.

(c) To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description.

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(d) To enter into, make, perform and carry out contracts of every sort and kind with any person, firm, association, corporation, private, public or municipal, body politic, and with the Government of the United States, or any state, territory or colony thereof, or any other government.

(e) To take, acquire, appropriate, purchase, sell, store, supply and furnish water for manufacturing and domestic uses, and for any other purpose to which water can be applied and used, to construct and maintain reservoirs, dams, canals, flumes and pipe lines and all other works necessary and convenient for the catchment, diversion, storage, distribution or use of water; and to take, acquire, buy, own, sell, lease, mortgage and otherwise deal in and dispose of the same, and water, and rights to water, and riparian rights; to purchase, construct, sell, lease, mortgage and otherwise dispose of viaducts, wharves, chutes, piers and canals.

(f) To undertake, construct, acquire and carry on works of all kinds relating to any business of the corporation, and to enter into such contracts and make such arrangements as may be necessary and convenient to carry out the same.

(g) To acquire the good-will, rights and property of all kinds, and to undertake the whole, or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporation, bonds or otherwise.

(h) To apply for, obtain, register, purchase, lease or otherwise acquire, and to hold, own, use, operate, introduce, sell, assign, or otherwise dispose of, any and all trademarks, trade names and distinctive marks, and all inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise, and to take, exercise, develop, grant licenses in respect of, or otherwise turn to account, any such trademarks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired; and with a view to the working and development of the same, to carry on any business, whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

(i) To hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of, shares of the capital stock, bonds, or other evidences of indebtedness created by other corporation or corporations, and, while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote on stock to the same extent as a natural person might or could do.

(j) The corporation shall have express power, as fully as an individual might do, to issue bonds, debentures and evidences of indebtedness of all kinds, whether secured by mortgage or otherwise, and without limit as to amount, as well as to secure the same by mortgage, pledge, or otherwise.

[Removes all question as to the power of the company to issue bonds and debentures.]

(k) To guarantee the payment of dividends or interest on any shares, stocks, debentures or other securities issued by, or any other contract or obligation of, any corporation whenever proper or necessary for the business of this corporation in the opinion of its directors or the executive committee.

(l) To purchase, lease, exchange, hire or otherwise acquire any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of its business, to erect and construct, make, improve or aid or subscribe towards the construction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, houses for employees and others, and works of all kinds; and in conjunction with and in furtherance of the general business and purposes of the corporation, as above described, to construct, lease, own, operate or sell transportation line or lines, in any state or country, subject to the laws of such state or country, either directly or through the ownership of stock of a corporation formed or to be formed for the purpose under the laws of such state or country.

[An important power where it is desired to take over another company through the ownership of its stock, preserving the existence of the original company.]

(m) To do all and everything necessary, suitable, convenient or proper for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated, or of the powers herein named, or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holders of, or interested in, any property, or otherwise.

It is the intention that the objects and powers specified and clauses contained in this third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this, or any other, paragraph in this charter, but that the objects and powers specified in each of the clauses of this paragraph shall be regarded as independent objects and powers.

FOURTH.—The total authorized capital stock of the corporation is thirty million dollars (\$30,000,000), divided into three hundred thousand (300,000) shares of the par value of one hundred dollars (\$100) each.

Of such total authorized capital stock, one hundred and fifty thousand (150,000) shares, amounting to fifteen million dollars (\$15,000,000) shall be preferred stock, and one hundred and fifty thousand (150,000) shares, amounting to fifteen million dollars (\$15,000,000), shall be common stock.

From time to time the preferred stock and the common stock shall be issued in such amounts and proportions as shall be determined by the board of directors and as may be permitted by law.

The preferred stock shall be entitled, out of any and all surplus net profits, whenever declared by the board of directors, to non-cumulative dividends, at the rate of, but not exceeding, seven (7) per cent. per annum

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for the fiscal year beginning on the first day of July, A. D. 1899, and for each and every fiscal year thereafter, payable in preference and priority to any payment of any dividend on the common stock for such fiscal year. In addition thereto, in the event of the dissolution of the corporation, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares out of the surplus funds of the corporation, before anything shall be paid therefrom to the holders of the common stock.

[No provision being made as to the division, between the two classes of stock, of the surplus funds on dissolution after payment of the par value of both classes, such surplus, therefore, under section 86, p. 92, *ante*, will be distributed *pro rata* among the holders of the common stock. (*McGregor v. Home Ins. Co.*, 33 N. J. Eq., 181, 186, 187.)]

The common stock shall be subject to the prior rights of the holders of the preferred stock, as herein declared. If, after providing for the payment of full dividends for any fiscal year on the preferred stock, there shall remain any surplus net profits of such year, any and all such surplus net profits of such year and of any other fiscal year for which full dividends shall have been paid on the preferred stock, shall be applicable to dividends upon the common stock, when and as, from time to time, the same shall be declared by the board of directors, and out of any such surplus net profits, after the close of any fiscal year, the board of directors may pay dividends upon the common stock of the corporation for such fiscal year, but not until after the dividends upon the preferred stock for such fiscal year shall have been actually paid or provided and set apart.

FIFTH.—The names of the incorporators (the post-office address of each is No. 60 Grand street, Jersey City, N. J.) and the number of shares of common stock (ten) subscribed for by each, the aggregate of which, being three thousand dollars (\$3,000), is the amount of capital stock with which the corporation will commence business, are as follows: (*Here follow names of incorporators, with number of shares subscribed.*)

SIXTH.—The duration of the corporation shall be unlimited.

SEVENTH.—The corporation may use and apply its surplus earnings or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner, and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation shall be regarded as profits for the purpose of declaration or payment of dividends, unless otherwise determined by a majority of the board of directors or a majority of the stockholders.

The corporation in its by-laws may prescribe the number necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number.

The directors shall have power from time to time and at any time

when the stockholders as such are not assembled in a meeting regular or special, to increase their number and forthwith to appoint and elect any other persons from the stockholders to be directors, to hold office until the next annual election, and until their successors are elected and qualified, but no increase of directors and no such appointment shall be effective unless two-thirds of the directors concur therein.

[The provision allowing the directors to increase their own number is well and fully expressed. As to its validity, see p. 32, *ante*.]

In case of an increase in the board of directors between the annual election by the stockholders, the newly created directorships shall be and be construed as vacancies until the next annual election to be filled forthwith by the board.

[See *in re A. A. Griffing Iron Co.*, 41 Atl. Rep., 931: p. 32, *ante*.]

The board of directors shall have power without the assent or vote of the stockholders, to make, alter, amend or rescind the by-laws of the corporation, to fix the amount to be reserved as working capital, to authorize and to cause to be executed mortgages and liens upon the real and personal property of the corporation, and from time to time to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation, but no such sale of all of the property shall be made except pursuant to the vote of at least two-thirds of the board of directors.

The board of directors, and when the board is not in session the executive committee, in addition to the powers and authorities by statute and by the by-laws expressly conferred upon them, are hereby empowered to exercise all such powers and to do all such acts and things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the statute, of the charter, and to any regulations that may from time to time be made by the stockholders; *provided*, that no regulations so made shall invalidate any provisions of this charter, or any prior acts of the directors or executive committee which would have been valid if such regulations had not been made.

The board of directors, by resolutions passed by a majority of the whole board, may designate three or more directors to constitute an executive committee, which committee, to the extent provided in said resolution, or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The board of directors from time to time shall determine whether and to what extent, and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation except as conferred by statute or authorized by the board of directors, or by a resolution of the stockholders.

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The directors shall not be subject to removal during their terms of office.

The board of directors shall have power to hold their meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of this state, at such places as may from time to time be designated by them.

The undersigned, for the purpose of forming a corporation in pursuance of an act of the Legislature of the State of New Jersey, entitled, "An Act concerning corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto, do make, record and file this certificate, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly hereunto have set our hands and seals.

Dated Jersey City, March 16th, A. D., 1899.

(Here follow signatures of incorporators and acknowledgment.)

THE BY-LAWS.

STATUTORY MATTERS TO BE PROVIDED FOR IN THE BY-LAWS.

[The references are to sections of the General Corporation Act, *ante*.]

- (1) The number of directors should be fixed. Afterwards the number may be altered. Section 1, subdivision VI.
- (2) Provisions for the management of the corporate property. Section 1, subdivision VI.
- (3) Provisions for the regulation and government of the affairs of the company. Section 1, subdivision VI.
- (4) The time of the annual election should be fixed. The place of the election, *i. e.*, the principal office of the company, is required to be fixed by the certificate of incorporation (Section 8, subdivision II.). Section 12.
- (5) Classification of directors if authorized by certificate of incorporation. Section 12.
- (6) Provide whether officers shall be elected by stockholders or Directors. Section 13.
- (7) Duties of president, secretary and treasurer. Section 13.
- (8) Treasurer's bond. Section 13.
- (9) Manner of election or appointment and tenure of other officers, agents, &c. Section 14.
- (10) Filling of vacancies among directors and officers. If no provision is made vacancies are filled by the board of directors. Section 15.
- (11) Manner of calling and conducting meetings. Section 17.
- (12) Qualification of voters, whether one or more shares is necessary for each vote. Section 17.
- (13) Fix quorum for stockholders' meetings. Section 17.
- (14) Manner of transferring stock and regulations as to transfers. Section 1, subdivision VI. Section 20.
- (15) Number of shares to entitle stockholders to one vote. Section 36.
- (16) Qualification of directors. Section 39.

(17) Establishment of office outside of state, and keeping books out of state. Section 44.

(18) Date of declaration of dividends. Section 47.

(19) Power to directors to fix amount to be reserved as working capital. Section 47.

No form of by-laws can be given which may be safely followed under all circumstances. The by-laws are a supplement to the certificate of incorporation and should follow the scheme of organization laid out therein.

As the former requires the services of skillful counsel so the latter require like assistance, and no ready-made form of by-laws would be valuable for general use. The sections pertaining to the business management of the company are susceptible of changes to meet the requirements in each particular case.

Following will be found a short form of by-laws and three other forms. The latter are the by-laws of important companies recently organized.

Form 148.

SHORT FORM OF BY-LAWS.

Meetings of stockholders :

1. All meetings of stockholders shall be held at the principal office of the company.

2. A majority of the stock issued and outstanding shall be requisite to constitute a quorum.

3. The annual meeting of stockholders, after the year 18 , shall be held on the first day of in each year, at o'clock, . M., when they shall elect, by a plurality vote, by ballot, the board of directors as constituted by these by-laws, to serve for one year and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote, in person or by proxy, for each share of stock standing registered in his or her name on the twentieth day preceding the election, exclusive of the day of such election.

Notice of the annual meeting shall be mailed to each stockholder at his address as the same appears upon the records of the company at least days prior to the meeting.

4. Special meetings of the stockholders shall, at the request of any director, be called by the secretary by mailing a notice stating the object of such meeting, at least two days prior to the date of meeting, to each stockholder of record at his address, as the same appears on the records of the company.

Directors :

5. The directors, in number, shall be chosen from the stockholders and shall hold office for one year and until others are elected and qualified in their stead. The number of directors may be increased or decreased by amendment of this provision of the by-laws.

6. Any director or other elected officer may resign his office at any time. The acceptance of a resignation shall not be required to make it valid.

Form 148 Meetings of directors; quorum :

7. Stated meetings of the directors shall be held without notice on the first day of each month, at the office of the company in the City of , or, by order of the board of directors, elsewhere, at an hour to be fixed by the board.

8. A majority of the directors in office shall be necessary to constitute a quorum for the transaction of business, except to adjourn.

9. Special meetings of the board may be called by the president on one day's notice to each director.

10. The directors may hold their meetings and have an office and keep the books of the company (except the stock and transfer books) outside of the State of New Jersey, in the city of or such other place or places as they may from time to time fix upon.

Powers of the directors :

11. The board of directors shall have the management of the business of the company, and in addition to the powers and authorities by these by-laws expressly conferred upon them, may exercise all such powers and do all such things, as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the statute, of the charter and of these by-laws.

Executive committee :

12. There may be an executive committee of directors appointed by the board, who shall meet when they see fit. They shall have authority to exercise all the powers of the board at any time when the board is not in session.

13. Power is hereby given to the executive committee to act by the written consent of a quorum thereof, although not formally convened.

Officers :

14. At the first meeting after the annual election of directors, when there shall be a quorum, the board of directors shall elect, by ballot, a president and vice-president from their own number, who shall hold office for one year and until their successors are elected and qualify.

15. The board shall also annually choose a secretary and a treasurer (or one person to act as both secretary and treasurer), who need not be members of the board, who shall hold office for one year, subject to removal by the board at any time, with or without cause.

President :

16. The president shall be the chief executive officer and head of the company, and in the recess of the board of directors and of the executive committee shall have the general control and management of its business and affairs, subject, however, to the right of the directors to delegate any specific power, except such as may be by statute exclusively conferred on the president, to any other officer or officers of the company.

Vice-president :

17. The vice-president shall be vested with all the powers, and shall perform all the duties of the president in his absence.

The secretary :

18. The secretary shall be *ex-officio* clerk of the board of directors and of the standing committees; he shall attend all sessions of the board, and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose.

19. He shall give notice of all calls for instalments to be paid by the stockholders, and shall see that proper notice is given of all meetings of the stockholders and of the board of directors.

20. He shall be sworn to the faithful discharge of his duty and shall perform such duties as may be required by the board of directors or the president and shall at all times be subject to the orders of the board of directors.

The treasurer :

21. The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the company, and shall deposit all moneys and other valuable effects in the name and to the credit of the company in such depositories as may be designated by the board of directors.

22. He shall disburse the funds of the company as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors, at the regular meetings of the board, or whenever they may require it, account of all his transactions as treasurer and of the financial condition of the company.

Vacancies :

23. If the office of any director or member of the executive committee, or of the president, vice-president, secretary or treasurer, one or more, becomes vacant, by reason of death, resignation, disqualification or otherwise, the remaining directors, although less than a quorum, by a majority vote, may elect a successor or successors, who shall hold office for the unexpired term.

Duties of officers may be delegated :

24. In case of the absence of an officer of the company, or for any other reason that may seem sufficient to the board, the board of directors may delegate his powers and duties for the time being to any other officer, or to any director.

Offices :

25. The company may have an office and transact business in the City of _____, State of _____, and at such other places as the board of directors may from time to time appoint or the business of the company may require.

Form **Fiscal year:**
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26. The fiscal year of the company shall begin the first day of January in each year.

Dividends :

27. Dividends upon the capital stock of the company when earned shall be payable annually on the first day of _____ in each year.

Before payment of any dividends or making any distribution of profits, there may be set aside out of the net profits of the company such sum or sums as the directors from time to time in their absolute discretion think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the company, or for any such other purpose as the directors shall think conducive to the interests of the company.

Checks, drafts, &c. :

28. All checks, drafts or orders for the payment of money shall be signed by the president and treasurer.

Notes :

29. Unless the board of directors shall otherwise order, all notes and acceptances shall be signed by the president or the vice-president and countersigned by the treasurer.

Notice :

30. Whenever under the provisions of these by-laws notice is required to be given to any director, officer or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing by depositing the same in the post-office or letter box, in a post-paid, sealed wrapper, addressed to such director, officer or stockholder, at his or her address (other than the principal office of the company in New Jersey) if and as the same appears on the books of the company, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Waiver of notice :

31. Any stockholder, officer or director may at any time waive any notice required to be given under these by-laws.

Amendment of by-laws :

32. The stockholders, by the vote of a majority of the stock issued and outstanding, may at any regular or at any special meeting alter or amend these by-laws.

33. The board of directors, by a vote of _____ members, may alter or amend these by-laws at any time, provided five days' notice in writing shall have been given to each of the directors of the proposed amendment.

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BY-LAWS.

I.

1. The title of the corporation is
2. The principal office is at
3. The corporate seal of the corporation shall have inscribed thereon the name of the corporation, the year of its creation and the words "New Jersey."

II.

4. The property and business of the corporation shall be managed and controlled by a board of directors, who shall at all times be stockholders. They shall hold office for one year, and until others are elected and qualified in their stead. The number of the first board of directors shall be three; but at any time the number may be increased by vote of the board of directors, and, in case of any such increase, the board of directors shall have power to elect such additional directors to hold office until the next meeting of stockholders, and until their successors shall be elected. If the office of any director becomes or is vacant by reason of death, resignation, disqualification, increase in number or otherwise, the remaining directors, by a majority vote, may elect a successor, who shall hold office for the unexpired term and until his successor is elected.

The first board of directors and any directors elected thereby in case said board is increased and any member thereof elected by the board to fill vacancies shall remain in office until the annual meeting of the stockholders to be held in _____ in the year _____.

III.

MEETINGS OF STOCKHOLDERS.

5. The annual meeting of stockholders shall be held on the _____ day of _____ in each year, beginning in the year _____, if not a legal holiday, and, if a legal holiday, then on the day following, at the registered office of the corporation in the State of _____, commencing at _____ o'clock, _____ M., when they shall elect by a plurality vote by ballot the full board of directors to serve for one year, and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote in person or by proxy for each share of stock standing registered in his name on the _____ day of the month preceding the election; provided, no stock shall be voted which has been transferred within twenty days of the time of the election.

A majority in amount of the stock outstanding shall be requisite to constitute a quorum for an election of directors or the transaction of other business.

The polls for such election shall be open at _____ o'clock _____ M., and closed at _____ o'clock _____ M.

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Notice of the annual meeting may be published in a newspaper in the City of _____, and in the City of _____, once each week during the calendar month next preceding the meeting; but a failure to publish such a notice, or any irregularity in the publication or notice, shall not affect the validity of the said meeting or the proceedings therein.

Special meetings of stockholders shall be called by the secretary by mailing a notice at least ten days prior to the date of meeting to each stockholder of record at his last-known post-office address, on the request in writing, or by vote, of a majority of the board of directors or executive committee, or on demand in writing by stockholders of record owning a majority in amount of the entire issued capital stock of the corporation.

IV.

MEETINGS OF DIRECTORS.

6. The board of directors shall meet at the office of the corporation in _____, as soon as practicable after the adjournment of the annual meeting of stockholders each year and elect the officers of the corporation for the ensuing year.

Regular meetings of the directors shall be held at the office of the corporation in _____, or, by order of the directors, elsewhere, on a day and at an hour to be fixed by resolution of the board.

Notice of regular meetings shall be mailed to each director at his last-known post-office address by the secretary at least three days previous to the time fixed for the meeting.

While the number of directors remains at three, a majority shall be necessary to constitute a quorum for the transaction of business; but if the number of directors shall be increased to _____ then _____ shall constitute a quorum for the transaction of business.

Special meetings of the board may be called by the president on one day's notice to each director, delivered to him personally or left at his residence or usual place of business; or such special meetings may be called in like manner on the written request of three members.

V.

COMPENSATION OF DIRECTORS AND EXECUTIVE COMMITTEE.

7. Directors and members of the executive committee, as such, shall not receive any stated salary for their services, but may be allowed \$ _____ each for attendance at each regular or special meeting, if present at roll call and until adjournment, unless excused.

VI.

INSPECTORS OF ELECTION.

8. The board of directors, at a meeting held prior to the annual meeting of the stockholders, shall appoint two stockholders to act as inspectors and conduct the election of directors at the ensuing annual

meeting of stockholders. Inspectors of election shall not be eligible to the office of director. If any inspector of election fails to attend the election a successor may be appointed by the stockholders in attendance.

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VII.

ORDER OF BUSINESS.

9. The order of business at the meetings of the board of directors shall be as follows:

(1) A quorum being present, the president, or in his absence the vice-president, or in his absence the president pro tem., if such there be, or a chairman selected by the meeting, shall call the board to order.

(2) The minutes of the last meeting shall be read and considered as approved if there be no amendments.

(3) Reports of officers of the company.

(4) Reports of committees.

(5) Unfinished business.

(6) Miscellaneous business.

(7) New business.

This order may be changed at any meeting by a majority vote of the directors present.

VIII.

OFFICERS OF THE CORPORATION.

10. The officers of the corporation shall consist of a president, vice-president, secretary, general counsel, treasurer and such other officers as may from time to time be elected or appointed by the board of directors.

One person may hold more than one office.

IX.

OFFICERS.

11. The directors shall elect from among their own number a president and vice-president, and shall also appoint a secretary, treasurer and general counsel.

X.

DUTIES OF THE PRESIDENT.

12. It shall be the duty of the president when present to preside at all meetings of the board of directors and of the executive committee; to have general and active management of the business of the corporation; to see that all orders and resolutions of the board are carried into effect; to execute all contracts and agreements authorized by the board; to keep in safe custody the seal of the corporation, and, when authorized by the board or executive committee, to affix the seal to any instrument requiring the same, which seal shall always be attested by the signature of the president or vice-president and of the secretary or the treasurer. He may sign certificates of stock.

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He shall have the general supervision and direction of all the other officers of the corporation, and shall see that their duties are properly performed.

He shall submit a complete report of the operations and conditions of the corporation for the year to the directors at their regular meeting in , and to the stockholders at their annual meeting in of each year, and from time to time shall report to the directors all matters within his knowledge which the interest of the company may require to be brought to their notice.

He shall be *ex officio* a member of all standing committees and shall have the general powers and duties of supervision and management usually vested in the office of the president of a corporation.

He shall in a general way be familiar with the affairs of any other corporations in which this corporation may be interested.

He shall freely consult and advise with the executive committee and other officers in relation to the business and interests of the corporation.

XI.

VICE-PRESIDENT.

13. The vice-president shall be vested with all the powers and required to perform all the duties of the president in his absence. He may sign certificates of stock; and he shall perform such other duties as may be prescribed by the board of directors.

XII.

PRESIDENT PRO TEM.

14. In the absence of the president and vice-president, the board may appoint a president *pro tem*.

XIII.

SECRETARY.

15. The secretary shall be *ex officio* secretary of the board of directors and of the standing committees; shall attend all sessions of the board; shall act as clerk thereof and record all votes and the minutes of all proceedings in a book to be kept for that purpose.

He shall perform like duties for the standing committees when required.

He shall see that proper notice is given of all meetings of the stockholders of the corporation and of the board of directors, and shall perform such other duties as may be prescribed from time to time by the board of directors, the executive committee or president.

He shall be sworn to the faithful discharge of his duty and shall give such bond as may be required by the board of directors or the executive committee.

XIV.

TREASURER.

16. The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors or executive committee.

He shall disburse the funds of the corporation as may be ordered by the board, the executive committee or the president, taking proper vouchers for such disbursements, and shall render to the president, executive committee and directors at the regular meetings of the board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the corporation, and at the regular meeting of the board in annually a like report for the preceding year.

He shall give the corporation a bond in form and in a sum and with security satisfactory to the board of directors, or the executive committee, for the faithful performance of the duties of his office and the restoration to the corporation, in case of his death, resignation or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession belonging to the corporation, and containing such other provisions as the board of directors or executive committee may require, and shall perform such other duties as the board of directors or executive committee may from time to time prescribe or require.

Certificates of stock, when signed by the president or vice-president, shall be countersigned by the treasurer. He shall keep the accounts of stock registered and transferred in such form and manner and under such regulations as the board of directors may prescribe.

XV.

GENERAL COUNSEL.

17. The general counsel shall be the legal adviser of the corporation and shall perform such services as the president, the board of directors or the executive committee may require, and shall receive such compensation as may be determined by the board of directors or executive committee.

XVI.

DUTIES OF OFFICERS MAY BE DELEGATED.

18. In case of the absence of any officer of the corporation, the board of directors or the executive committee may delegate his powers or duties to any other officer or to any director for the time being.

XVII.

STANDING COMMITTEE.

19. There shall be an executive committee, of which the president shall be one, of five directors selected by the board who shall meet at

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regular periods, or on notice to all by any of their own number. They shall advise with and aid the officers of the corporation in all matters concerning its interests and the management of its business; and when the board of directors is not in session, the executive committee shall have and may exercise all the powers of the board of directors.

The executive committee, unless otherwise provided by the board of directors, shall fix the salaries or compensation of all officers.

The executive committee shall keep regular minutes, and cause them to be recorded in a book kept in the office of the corporation for that purpose, to be read to the board of directors at each meeting thereof for their information.

XVIII.

TERM OF OFFICE.

20. Each officer shall hold his office only during the pleasure of the board of directors.

XIX.

TRANSFER OF STOCK.

21. All transfers of the stock of the corporation shall be made upon the books of the corporation by the holder of the shares in person or by his legal representative; but no transfer of stock shall be made within ten days next preceding the day appointed for paying a dividend.

XX.

CERTIFICATES TO BE CANCELLED.

22. Certificates of stock surrendered shall be cancelled by the transfer agent at the time of transfer.

XXI.

LOSS OF CERTIFICATE.

23. Any person claiming a certificate or evidence of stock to be issued in place of one lost or destroyed shall make an affidavit or affirmation of that fact and advertise the same in such newspaper, and for such space of time, as the board of directors or executive committee may require, describing the certificate, and shall furnish the corporation with proof of publication by the affidavit of the publisher of the newspaper, and shall give the board a bond of indemnity in form approved by the board, with one or more sureties, if required, in not less than double the par value of such certificate; whereupon, the president and treasurer may, at such date, after the termination of the advertisement, as the board of directors or executive committee may designate, issue a new certificate of the same tenor with the one alleged to be lost or destroyed, but always subject to the approval of the board of directors or executive committee.

XXII.

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CHECKS FOR MONEY.

24. All checks, drafts or orders for the payment of money shall be signed by the treasurer and countersigned by the president or vice-president, or such other officer as the president may designate in writing.

No check shall be signed in blank.

XXIII.

BOOKS AND RECORDS.

25. The books, accounts, and records of the corporation shall be open to inspection by the stockholders only at such times as the board of directors may by resolution designate.

XXIV.

ALTERATION OF BY-LAWS.

26. The board of directors, by a vote of a majority of the whole board at any meeting, may alter or amend these by-laws.

Form 150.**BY-LAWS.****ARTICLE I.****LOCATION AND CORPORATE SEAL.**

The principal office of the company shall be at

New Jersey. The corporate seal of the company shall consist of a circle formed of the words " " with the words: "Corporate Seal" and the figures "189 ," and the letters "N. J." in the centre.

ARTICLE II.**DIRECTORS.**

SECTION 1. The property and business of the corporation shall be managed by a board of directors.

The elections shall be by ballot at the stockholders' annual stated meeting. If the office of any director becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining directors may by a majority vote elect a successor who shall hold office for the unexpired term.

SEC. 2. Meetings of directors.—The directors shall hold their regular meetings at such place or places as the board shall from time to time designate.

It shall be the duty of the secretary to send a notice to each of the

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directors at his address as it appears on the books of the company, at least ten days before the holding of each stated meeting, but a failure of the secretary to send such notice shall not invalidate any proceedings of the said board.

Special meetings of the board may be called by the chairman of the board or by the president on three days' notice to each director.

The secretary shall, or any officer of this company may, upon the request of directors, call a special meeting of the board by sending to each member thereof a notice of the time, place and object of such meeting; which shall be held not less than five days after the mailing of such notice.

SEC. 3. *Order of business.*—The order of business at all meetings of the board of directors shall be as follows:

(1) Roll call.

A quorum being present:

(2) Reading of minutes of preceding meeting and action thereon.

(3) Reports of officers.

(4) Reports of committees.

(5) Unfinished business.

(6) Miscellaneous business.

(7) New business.

SEC. 4. *Powers of directors.*—The board of directors shall have management of the business of the company, and, in addition to the powers and authorities by these by-laws expressly conferred upon them, they may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of statute, of the charter and of these by-laws.

Without prejudice to the general powers conferred by the last preceding clause and to the other powers conferred by these by-laws, it is hereby expressly declared that the board of directors shall have the following powers, that is to say:

To purchase or otherwise acquire for the company any property, rights or privileges which the company is authorized to acquire at such prices and on such terms and conditions and for such consideration as they think fit.

At their discretion to pay for any property or rights acquired by the company, either wholly or partly, in money or in stock, bonds, debentures or other securities of the company.

To appoint, and at their discretion to remove or suspend, such managers, officers, subordinates, assistants or otherwise, and clerks, agents and servants, permanently or temporarily, as they may from time to time think fit; and to determine their duties, and fix, and from time to time change, their salaries or emoluments, and to require security in such instances and in such amount as they think fit.

To confer by resolution upon any officer of the company the right to choose, remove or suspend such subordinate officers, agents or factors.

To appoint any person or persons to accept and hold in trust for the

company any property belonging to the company, or in which it is interested, or for any other purpose, and to execute and do all such duties and things as may be requisite in relation to any such trust.

To determine who shall be authorized to sign on the company's behalf bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents, except as otherwise provided in these by-laws.

From time to time to provide for the management of the affairs of the company at home or abroad in such manner as they think fit; and, in particular, from time to time to delegate any of the powers of the board of directors to any committee, officer or agent, and to appoint any persons to be the agents of the company with such powers (including the power to sub delegate) and upon such terms as may be thought fit and so far as may be lawful.

ARTICLE III.

STOCKHOLDERS' MEETINGS.

SECTION 1. *Annual stated meeting.*—The annual stated meeting of the stockholders of the company for the election of directors and for the transaction of such other business as may come before it shall be held on the _____ in each year at the principal office of the company in New Jersey at _____ o'clock A. M.

The secretary of the company shall mail at least thirty days before every such meeting a notice thereof, addressed to each stockholder of record, at his last-known post-office address.

SEC. 2. *Special meetings.*—The secretary shall, or any officer of the company may, call a special meeting of the stockholders on the request in writing or by a vote of a majority of the board of directors, or on demand in writing by stockholders of record owning a majority in amount of the entire issued capital stock of the company. At least ten days' notice of such meeting shall be given.

SEC. 3. *Quorum.*—At all meetings of the stockholders, excepting only the annual stated meetings, a majority of stock to be voted in accordance with provisions of the charter shall be requisite to constitute a quorum to transact any business, excepting to adjourn.

SEC. 4. *Order of business.*—The order of business at all meetings of stockholders shall be as follows:

(1) Roll call.

A quorum being present:

- (2) Reading of minutes of preceding meeting and action thereon.
- (3) Reports of officers.
- (4) Reports of committees.
- (5) Election of directors.
- (6) Unfinished business.
- (7) New business.

ARTICLE IV.

OFFICERS.

SECTION 1. *Election.*—Immediately after the election of directors, if all of the board of directors be present or if those absent have filed

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waiver of notice, and, if not, at their first meeting thereafter on notice, when there shall be a quorum, the said board shall elect by ballot a chairman of the board, a president and a vice-president from their own number, who shall hold office for one year and until their successors are elected and qualified; and shall choose a secretary, a treasurer, and an auditor, who shall hold office during the pleasure of the board. But any such office which shall not be filled at such first meeting of the board may be filled at a subsequent meeting.

SEC. 2. The officers of the company shall consist of those above named and such other officers as may from time to time be elected or appointed by the board of directors. One person may hold more than one office.

SEC. 3.—*Power and duties.*

(a) *Chairman of the board.*—It shall be the duty of the chairman to preside at all meetings of the board of directors and to give such counsel and advice to the executive committee or to the president as from time to time he may deem essential to the best interests of the company.

(b) *President.*—It shall be the duty of the president to preside at stockholders' meetings and in the absence of the chairman of the board to preside at all meetings of the board of directors; to have general and active management of the business of the company; to execute all contracts and agreements authorized by the board or by the executive committee, if any; to keep in safe custody the seal of the company; and when authorized by the board or by the executive committee, if any, to affix the seal to any instrument requiring the same, which seal shall always be attested by the signatures of the president and of the secretary or of the treasurer. He may sign certificates of stock.

He shall have the general supervision and direction of all the other officers of the company except the chairman of the board and shall see that their duties are properly performed. He shall submit a report of the operations of the company for each preceding year to the directors at their last stated meeting (or at a special meeting called for that purpose) before the annual stated meeting of the stockholders; and to the stockholders at their annual stated meeting; and from time to time he shall report to the directors all matters within his knowledge which the interests of the company may require to be brought to their notice. He shall freely consult and advise with the chairman of the board, and also with the executive committee, if any, in relation to the business and interests of the company.

(c) *Vice-President.*—The vice-president shall be vested with all the powers and shall be required to perform all the duties of the president in his absence, or during his inability or incapacity to act. He may sign certificates of stock and any or all reports, or certificates required by law to be signed by the president, and he shall perform such other duties as may be prescribed by the board of directors. In the absence of the president and of the vice-president, the chairman of the board shall act

as president *pro tempore*; and, in the absence of all, the board may appoint a president *pro tempore*. **Form 150**

(d) *Secretary*.—The secretary shall be *ex officio* secretary of the board of directors and of all standing committees. He shall keep the minutes of all meetings of the board of directors and of the stockholders. He shall give and serve all notices of the company. He shall attend to such correspondence of the company as may be assigned to him, and in general he shall do and perform all the duties incident to his office.

(e) *Treasurer*.—The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the company, and he shall deposit all moneys and other valuable effects in the name and to the credit of the company in such depositories as may be designated by the board of directors. He shall have the authority to endorse on behalf of the company for the purpose only of transfer to the depositary bank or trust company, to be deposited therein, all checks, drafts, notes, warrants and orders. He shall have power to sign all checks, drafts, notes, warrants and orders for the payment of money, which, however, to be valid must be countersigned by the president or by the vice-president; and he shall pay out and dispose of the same. At each annual stated meeting of the stockholders he shall present a full statement of the money affairs of the corporation. He shall annually in _____, and at any other meeting at which he may be requested to do so, make a like report to the board of directors for the year preceding; and whenever required by the board of directors he shall report on all the moneys received and disposed of by him and on the amount of money in his hands, and he shall make such other statements and reports as are required of him by law. The certificates of stock shall be signed by him in addition to bearing the signature of the president or the vice-president. In general, he shall perform all the duties incident to his office, and such as may be required of him by the board of directors. He shall give the company a bond in a sum and with security satisfactory to the board of directors for the faithful performance of the duties of his office and for the restoration to the company in case of his death, resignation or removal from office, of all books, papers, vouchers, moneys or other property of whatever kind in his possession belonging to the company. He shall keep the accounts of stock registered and transferred in such form and manner and under such regulations as the board of directors may prescribe.

(f) *Auditor*.—The auditor shall have supervision over all the accounts and account books of the company and he shall see that the system of keeping the same is enforced and maintained. He shall direct as to forms and blanks relating to books and accounts in all departments, and of all companies or corporations owned or controlled by this company; and no change shall be made without his consent or the consent of the president or of the executive committee, if any. He shall see that there is kept in the bookkeeping department a set of books containing a complete record of all business transactions of the company pertaining to accounts.

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He shall, when requested, furnish the board of directors, the executive committee, if any, or president, a statement of the earnings and expenses of the company, or of any other corporation in which this corporation may be interested for any given time, and shall keep books and records for the purpose of furnishing such statistics.

He shall verify at least twice a year the assets reported by the treasurer or by his assistant; and he shall make report of the same to the board of directors.

He shall cause the books and accounts of all officers and agents charged with the receipt or disbursement of money to be examined as often as practicable, or when requested by the president or executive committee, if any; and he shall ascertain whether or not the cash and vouchers covering the balance are actually on hand.

He shall render such assistance and advice as the president or the executive committee, if any, may desire concerning the books and accounts and system of financial transactions of all other corporations in which this corporation is interested; and he shall furnish to the president or to the executive committee, if any, such statements concerning the same as may be requested by them.

He shall make an annual report which shall accompany the report of the president to the stockholders.

In case of a default within his information at any time he shall at once notify the president and the chairman of the board.

SEC. 4. *Statements by officers.*—It shall be the duty of each officer of this company to make and file any and all lists or statements in the State of New Jersey, or elsewhere, required by law.

SEC. 5. In case of the absence of any officer of the company the board of directors may delegate his powers and duties to any other officer or to any director for the time being.

ARTICLE V.

STANDING COMMITTEES.

SECTION 1. The board of directors may appoint from their number standing committees and may invest them with all their own powers, subject to such conditions as they may prescribe.

SEC. 2. All standing committees shall keep regular minutes of their transactions and shall cause them to be recorded in books kept for that purpose in the office of the company, and shall report the same to the board of directors at their regular meetings.

ARTICLE VI.

INSPECTORS OF ELECTION.

At each annual stated meeting of the stockholders for the election of officers, the presiding officer of such meeting shall appoint two persons to act as inspectors who shall be sworn to perform their duties in accordance with the laws of the State of New Jersey, and who shall return a formal certificate.

ARTICLE VII.

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CERTIFICATES AND TRANSFERS OF STOCK.

SECTION 1. *Issue and registration.*—Certificates of stock shall be signed by the president or the vice-president and by the treasurer, and shall be countersigned by the transfer agent, and shall be numbered and registered in the order in which they are issued. They shall be bound in a book and shall be issued in consecutive order therefrom; and in the margin of this book shall be entered the names of the persons owning the shares therein represented, the number of shares and the dates thereof.

All certificates exchanged or returned to the company shall be marked "cancelled," with date of cancellation, by the transfer agent, and each cancelled certificate shall be preserved. No new certificate shall be issued until the old certificate has been itself cancelled; *provided, however*, that in case any certificate shall be lost the directors may order a new certificate to be issued in its place upon receiving such proof of loss and such security therefor as may be satisfactory to them.

SEC. 2. *Transfers.*—Transfers of shares shall be made only upon the books of the company by the holder in person or by attorney duly authorized, and upon the surrender of the certificate or certificates properly endorsed; but no transfers of stock shall be made within twenty days next preceding the day appointed for paying a dividend.

ARTICLE VIII.

HOLDINGS OF STOCK IN OTHER COMPANIES.

No shares of stock held by the company in any company whose property or stock may at any time have been purchased by the company shall be assigned, transferred or mortgaged except upon the assent of two-thirds of the holders of the preferred stock issued and outstanding, expressed in writing or by vote at a stockholders' meeting; nor shall this company, without such assent, vote any such stock of another company in favor of the creation of any bonded or mortgage indebtedness of such other company, but such stock may be assigned to any person or corporation satisfactory to the board of directors, in order that it may be held for this company, or to qualify such person or corporation to be directors; and the capital stock of any such company may be increased or decreased, and the stock held by this company may be voted for such increase or decrease, and may be surrendered and exchanged for the new stock of such company.

ARTICLE IX.

WAIVER OF NOTICE.

Any stockholder, director or other person may waive any notice required by these by-laws to be given to him. In cases, however, where it is required by statute that notice shall be given in a particular manner, the notice shall be waived only in the manner designated by statute.

THE BY-LAWS.

ARTICLE X.

NOTICE.

Whenever under the provisions of these by-laws notice is required to be given to any director, officer or stockholder, it shall not be construed to be limited to personal notice, but such notice may be given in writing by depositing the same in the post-office or letter-box in a post-paid, sealed wrapper, addressed to such director, officer or stockholder at his or her address as the same appears on the books of the company, and the time when the same shall be thus mailed shall be deemed to be the time of the giving of such notice.

ARTICLE XI.

DIVIDENDS AND WORKING CAPITAL.

Dividends may be declared on the shares of the corporation at any regular meeting of the board of directors.

The board of directors shall have power to fix the amount to be reserved as working capital.

ARTICLE XII.

AMENDMENTS.

The board of directors by a vote of a majority of the members may alter or amend these by-laws at any regular meeting of said board.

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BY-LAWS.

ARTICLE I.

MEETINGS OF STOCKHOLDERS.

SECTION 1. A regular annual meeting of the stockholders shall be held at the office of the company at _____, State of New Jersey, at _____ o'clock . M., on the _____ day of _____ in each year, beginning with the year 1900, for the election of directors and the transaction of such other business as may come before the stockholders for action.

SEC. 2. Special meetings of the stockholders may be called by the president or by order of the board of directors whenever they deem it necessary, and it shall be their duty to order and call such meetings whenever persons holding one-fourth of the capital stock of the company outstanding shall in writing request the same. Such special meetings shall be held at the principal office of the company in the same manner as the annual meeting.

SEC. 3. At all meetings of the stockholders each stockholder shall be entitled to one vote for each share held by him, which vote may be

given personally or by proxy authorized in writing. The instrument authorizing a proxy to act shall be exhibited to the secretary and inspectors of election at the meeting. No share or shares of stock which have been transferred on the books of the company within twenty days next preceding any election shall be voted on at any such election.

SEC. 4. The holders for the time being of a majority of the stock issued and outstanding, represented in person or by proxy, shall constitute a quorum for the transaction of business; and, in the absence of a quorum, the stockholders represented at the time and place for which a meeting shall have been called may adjourn the meeting for a period not exceeding twenty days.

SEC. 5. Notice of the annual and of any special meeting of the stockholders shall be given to each shareholder by posting the same in a postage prepaid letter, addressed to each stockholder at the address left with the secretary of the company, or by delivering the same personally at least ten days before such meeting, in addition to any publication or notice that may be required by law. The notice of a special meeting shall state briefly the object of the meeting, and no other business shall be transacted at such meeting. A failure to give the notice for the regular annual meeting shall not invalidate the proceedings of the meeting.

SEC. 6. The stockholders may at each annual meeting choose by ballot two persons (who need not be stockholders) to act as inspectors of election at all meetings of the stockholders until the close of the next annual meeting. In case of a failure to elect inspectors, or in case an inspector shall fail to attend or refuse to serve, the stockholders at any meeting may choose an inspector or inspectors to act at such meeting.

SEC. 7. The order of business at all meetings of the stockholders shall be as follows:

- (1) Proof of notice of meeting and report as to stockholders present in person or by proxy.
- (2) Reading of minutes of previous meeting and action thereon.
- (3) The appointment of inspectors of election, if the inspectors elected at the preceding annual meeting be not present and ready to serve.
- (4) Reports of officers.
- (5) The election of directors.
- (6) The election of inspectors of election to serve until the close of the next annual meeting.
- (7) Unfinished business.
- (8) New business.

The election of inspectors of election to serve until the close of the next annual meeting may be held at the same time as the election of directors and with the same ballot.

The order of business to be followed at any meeting may be changed by vote of the majority in interest of those present at the meeting.

THE BY-LAWS.

ARTICLE II.

BOARD OF DIRECTORS.

SECTION 1. The property and business of the corporation shall be managed and controlled by a board of directors, who must at all times be stockholders. The board shall consist of fifteen members and shall be divided into three classes of five members each. The first class shall hold office for three years, the second class for two years and the third for one year. At all regular elections after the year 1899 the directors, except when chosen to fill a vacancy, shall be chosen for a term of three years. In case of vacancy in the board resulting from death, resignation, disqualification or other cause, the board shall have power to appoint the members necessary to make up the full number of fifteen, but such appointment shall continue only until the next regular meeting of the stockholders. All directors shall hold their offices until their successors are elected and qualified.

SEC. 2. The directors shall act only as a board, and the individual directors shall have no power as such. Eight directors at a meeting duly called shall constitute a quorum for the transaction of business; but any less number may adjourn any meeting from time to time until a quorum shall be present.

SEC. 3. Regular meetings of the directors may be held at the office of the company in the City of New York, in the State of New York, or elsewhere in that or any other state, as the board of directors may from time to time determine. Notice of regular meetings shall be mailed by the secretary to each director at his last known post-office address at least three days previous to the time fixed for the meeting. Special meetings of the board may be called by the president, or by request of any three members, made in writing, on one day's notice to each director, delivered to him personally by mail or telegraph or left at his residence or usual place of business.

SEC. 4. The directors may, without notice, meet at the office of the company in Jersey City at 1 o'clock P. M., or at the office in the City of New York at 2 o'clock P. M. of the day of the regular annual meeting of the stockholders or the next day, and elect the officers of the corporation for the ensuing year. They shall also at such meeting appoint the executive committee.

SEC. 5. Directors as such shall not receive any stated salary for their services, but shall be allowed ten dollars for attendance at each regular or special meeting of the board, if present at roll call.

ARTICLE III.

EXECUTIVE COMMITTEE.

SECTION 1. The board of directors shall appoint an executive committee of three directors, who shall serve during the pleasure of the board. Vacancies in such executive committee shall be filled by the board of directors.

SEC. 2. The executive committee shall have and exercise, subject to the control of the board of directors, all the powers of the board requisite for the conduct, management and development of the company's business; and when the board is not in session, the executive committee shall have and may exercise all the powers of the board. Unless otherwise ordered by the board of directors, the executive committee shall fix the salaries or compensation of all the officers of the corporation, except those of the president and chairman. It may fill vacancies among the officers of the company, but any officer appointed by the executive committee may be removed by a vote of the board of directors. A majority of the executive committee shall be a quorum for the transaction of business, and the committee shall at all times act by a vote of a majority. If a member of the committee be absent from any meeting, the chairman of the committee shall have the power to appoint any director to act as a member of the committee for that meeting. The executive committee may hold its meetings at any office of the company or at any place designated by the directors, and may prescribe and regulate what, if any, notice shall be given of meetings of the committee.

ARTICLE IV.

OFFICERS.

SECTION 1. The board of directors shall annually elect or appoint the following permanent officers: A chairman of the board, a president, three vice-presidents, a treasurer, a secretary and an auditor. The board or executive committee may also from time to time appoint such other officers, committees, agents or employees as it deems proper.

SEC. 2. If any vacancy shall occur among the officers of the company such vacancy shall be filled by the board of directors or by the executive committee, except as to the chairman or president, vacancies in which offices shall be filled by the board.

SEC. 3. The board of directors, the executive committee, the chairman of the board or the president may from time to time prescribe the duties of the other officers, agents and employees of the company.

THE CHAIRMAN OF THE BOARD.

SEC. 4. It shall be the duty of the chairman to preside at all meetings of the board of directors. He shall have general supervision of the entire business of the corporation and of its several officers, subject to the control of the board of directors or executive committee.

THE PRESIDENT.

SEC. 5. It shall be the duty of the president, in the absence of the chairman of the board, to preside at all meetings of the board of directors, and subject to the above powers of the chairman to have general and active management of the business of the company; to see that all orders and resolutions of the board are carried into effect; to execute all con-

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tracts and agreements authorized by the board; to keep in safe custody the seal of the company, and, when authorized by the board or executive committee, to affix the seal to any instrument requiring the same, which seal shall always be attested by the signatures of the president or a vice-president and of the secretary or the treasurer. The president may sign and seal certificates of stock. He shall, subject to the above powers of the chairman, have the general superintendence and direction of all the other officers of the company (except the chairman), and shall see that their duties are properly performed.

The president shall submit a complete report of the operations of the company for the year, and of the state of its affairs on the 31st day of December, to the directors at their regular meeting in February of each year, and to the stockholders at their annual meetings, and from time to time shall report to the directors all matters within his knowledge, which the interests of the company may require to be brought to their notice. He shall, subject to the powers of the chairman, have the general powers and duties of supervision and management usually vested in the office of the president of a corporation, and shall in a general way be familiar with and exercise supervision over the affairs of the other corporations in which this company may be interested. He shall freely consult and advise with the chairman of the board and also the executive committee in relation to the business and interests of the company.

THE VICE-PRESIDENTS.

SEC. 6. The vice-presidents shall, in their order, be vested with all the powers and required to perform all the duties of the president in his absence. They may sign certificates of stock, and shall perform such other duties as may be prescribed by the board of directors or the executive committee.

PRESIDENT PRO TEM.

SEC. 7. In the absence of the president and the vice-presidents the board may appoint a president *pro tem*.

THE TREASURER.

SEC. 8. The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the company, and shall deposit all moneys and other valuable effects in the name and to the credit of the company in such depositories as may be designated by the board of directors or executive committee. He shall disburse the funds of the company as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the chairman or president and the directors at the regular meetings of the board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the company, and at the regular meeting of the board in , annually, he shall make a like report for the preceding year. He shall give the company a bond in the sum of in form and with security satisfactory to the board of directors or to the executive

committee, for the faithful performance of the duties of his office and the restoration to the company, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the company, and containing such other provisions as the board of directors or executive committee may require. Certificates of stock, when signed by the president or a vice-president, shall be countersigned by the treasurer. He shall keep the accounts of stock registered and transferred in such form and manner and under such regulations as the board of directors may prescribe. The board of directors or the executive committee may also appoint an acting or assistant treasurer as a permanent or temporary officer.

THE AUDITOR.

SEC. 9. The auditor shall have supervision over all the accounts and account books of the company, and see that the system of keeping the same is enforced and maintained. He shall direct as to forms and blanks relating to books and accounts in all departments, and no change shall be made without his consent or the consent of the chairman, president or executive committee. He shall see that there is kept in the bookkeeping department a set of books containing a complete record of all business transactions of the company pertaining to accounts, and shall, when requested, furnish the board, executive committee, chairman or president, a statement of the earnings and expenses of the company or of any other company in which this company may be interested, for any given time, and shall keep books and records for the purpose of furnishing such statistics. He shall verify the assets reported by the treasurer or his assistant at least twice a year, and make report of the same to the board or executive committee. He shall cause the books and accounts of all officers and agents charged with the receipt or disbursement of money to be examined as often as practicable, or when requested by the chairman, president or executive committee, and shall ascertain whether or not the cash and vouchers covering the balances are actually on hand. He shall render such assistance and advice as the chairman, president, executive committee or board may desire concerning the books, accounts and system of financial transactions of all other corporations in which this company is interested, and furnish to the chairman, president or executive committee such statements concerning the same as may be requested by them. In case of a default coming to his information at any time, he shall at once notify the chairman and president.

THE SECRETARY.

SEC. 10. The secretary shall record all the votes and proceedings of the stockholders and of the directors in a book kept for that purpose. He shall perform such other duties as pertain to his office, or as the chairman, the president, the board of directors or the executive committee may require. In the absence of the secretary from any meeting of the stockholders or directors, the record of the proceedings shall be kept and

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authenticated by such other person as may be appointed for that purpose at the meeting. The board of directors or the executive committee may also appoint an acting or assistant secretary as a permanent or temporary officer.

TENURE OF OFFICE.

SEC. 11. Each officer shall hold his office during the pleasure of the board of directors; *provided*, that with respect to all officers, except the chairman, president and vice-presidents, an agreement in writing may be entered into with authority of the board or the unanimous approval of the executive committee fixing a definite term.

ARTICLE V.

CONTRACTS AND AGREEMENTS.

No agreement, contract or obligation (other than a check), involving the payment of money, or the credit or liability of the company, shall be made without the approval of the board of directors or of the executive committee, except that the chairman or the president may in the ordinary course of the business of the company make contracts not involving an obligation or liability in excess of . All checks, drafts or orders for the payment of money shall be signed by the treasurer and countersigned by the chairman of the board, or president, or a vice-president.

ARTICLE VI.

SHARES AND THEIR TRANSFER.

SECTION 1. Each holder of stock shall be entitled to a stock certificate signed by the president or one of the vice-presidents and the treasurer of the company and countersigned by the transfer agent of the company, certifying the number of shares owned by him. All such certificates shall be issued in consecutive order from certificate books, and shall be numbered and registered in the order in which they are issued, and on the stub of each certificate issued shall be entered the name of the person owning the shares represented by such certificate, with the number of shares, and of which class, and the date of such certificate, and in case of cancellation, the date of cancellation; and the person receiving any such certificate shall personally or by agent sign on such stub a receipt for the certificate issued to him. Every certificate returned to the company for the exchange or transfer of shares shall be cancelled, and pasted in its original place in the stock certificate book, and no new certificate shall be issued until the old certificate has been thus cancelled and returned to its original place in such book.

SEC. 2. The board of directors or executive committee may appoint a registrar of transfers of stock in the City of New York, and after the appointment of such registrar of transfers, no certificate for stock shall be binding upon the company or have any validity unless countersigned by such registrar of transfers.

SEC. 3. Transfers of shares shall be made only upon the books of the company by the holder in person or by power of attorney duly executed and filed with the secretary of the company, and on the surrender of the certificate or certificates for such shares; but the board of directors or executive committee may appoint some suitable bank or trust company or agent in the City of New York or elsewhere to facilitate transfers by stockholders under such regulations as the board may from time to time prescribe. Such transfer books shall be closed for such a period as the board shall direct previous to and on the day of the annual or any special meeting of the stockholders. The transfer books may also be closed by the board for such period as may be deemed advisable for dividend purposes.

SEC. 4. Every stockholder shall furnish the secretary with an address at which notices of meetings and all other notices may be served upon or mailed to him, and in default thereof notice shall be addressed to him at the office of the company in Jersey City, New Jersey.

ARTICLE VII.

LOSS OF STOCK CERTIFICATE.

The board of directors may direct a new certificate or certificates of stock to be issued in the place of any certificate or certificates theretofore issued by the company, alleged to have been lost or destroyed, and the directors authorizing such issue of a new certificate or certificates may in their discretion require the owner of the lost or destroyed certificate, or his legal representatives, to give the company a bond, in such sum as they may direct, as indemnity against any claim that may be made against the company, but a new certificate may be issued without requiring any such bond when, in the judgment of the directors, it is proper so to do. The directors, however, may refuse to issue any new certificate except upon the institution of legal proceedings, as provided in the statute in such case made and provided.

ARTICLE VIII.

DIVIDENDS.

Dividends may be declared by the board of directors from time to time out of the surplus or net profits of the company and payable at such times as the board shall determine. The dividends on the preferred stock shall be payable quarterly, if from time to time so declared by the board, before any dividend shall be set apart or paid on the common stock.

ARTICLE IX.

SEAL.

The common corporate seal is, and until otherwise ordered by the board of directors shall be, an impression upon paper or wax bearing the words "The
Company, New Jersey
Incorporated 1899."

ARTICLE X.

ALTERATION OF BY-LAWS.

The board of directors by a vote of a majority of the members present at any meeting may alter or amend these by-laws, but no alteration shall be made unless first proposed at a meeting of the board and considered at a subsequent meeting.

ORGANIZATION MEETINGS.

FIRST MEETING OF INCORPORATORS.

After filing the certificate of incorporation with the secretary of state a meeting of the stockholders should be held at the registered office in New Jersey and the preliminary formal organization of the company effected.

The common practice is for the incorporators to sign a written waiver of notice fixing the time and place of the meeting. (*Form 154.*)

A copy of the certificate of incorporation should be presented, and it is usual to enter it at length in the minutes.

The by-laws should be adopted section by section, and these should also be entered at length upon the minutes. (*Forms 148-151.*)

Inspectors of elections should be appointed and sworn preliminary to the election of directors, which should then be held. (*Form 157.*) It is not necessary that the inspectors shall be stockholders.

A waiver by the stockholders of notice of assessment upon the capital stock should be signed and presented and also entered at length upon the minutes. (*Form 155.*)

A resolution authorizing the directors to assess the stock, in accordance with the terms of the waiver, should be passed.

Authority should be granted to the agent in charge of the registered office to keep the stock and transfer books, to show them to those having the right to see them, to keep the name of the company at all times publicly displayed, and, in all respects, to comply with the laws of New Jersey. (*Form 163.*)

It is usual to designate some trust company as the agent of the company for this purpose and to direct that the stock certificates be countersigned by such company as transfer agent. (P. L. 1899, p. 453, § 6, ¶ [2].)

In case the company is formed for the purpose of taking over an existing business, an agreement should be passed upon by the stockholders (*Form 161*), and the directors should be authorized to have it executed, and to take over the property and pay for it in stock of the company, or partly in stock and partly in cash or obligations of the company, as the circumstances of each case require.

It is wise at this point to authorize an increase of issued stock from the amount named in the certificate of incorporation as the amount with which the company will begin business, to the amount authorized by the charter as the total amount of capital. This can be done by resolution at this time and avoid the necessity of calling another stockholders' meeting, leaving it within the power of the directors, at their discretion, to issue the additional stock.

The design of the seal of the company should be adopted and the form of the stock certificate should also be passed upon and approved and entered at length in the minutes. (*Forms 177-9.*)

There is no necessity for any fixed number of stockholders to be present in person at this meeting; it is legal and not unusual for all the stockholders to attend by proxy.

A short form of minutes will be found below. (*Form 152.*)

FIRST MEETING OF DIRECTORS.

The meeting of the directors need not be held in New Jersey; it may be held at any place fixed upon and agreed to by the directors as evidenced by a waiver signed by them all, fixing the time, place and object of the meeting. (*Form 158.*)

The minutes of the stockholders' meeting should be read and recommendations, if any, acted upon.

The board should elect the officers of the company.

The oath should be administered to the secretary. (*Form 159.*)

The treasurer should give a bond, the form, the amount and the sureties or surety, being passed upon and approved by the board. (*Form 160.*)

If the by-laws provide for an executive committee the members should be appointed.

The secretary should be given authority to procure the corporate books, seal, &c.

A resolution should be placed upon the record in the form required by the bank with which the company is to deposit, authorizing the treasurer to open a bank account with the bank and clearly designating the manner in which checks and drafts should be signed, whether by one officer or more, and what should be the endorsement for deposit.

The directors should also pass a resolution with regard to the office of the company outside of the State of New Jersey, and, if desired, should authorize meetings of the board to be held at the office out of the state.

A formal resolution is usual directing the officers in accordance with the resolution of the stockholders to call the assessment of stock, and also directing the proper officers of the company to complete the purchase of the property, if any, specified in the minutes of the stockholders' meeting, and to issue stock therefor.

Care should be taken in this resolution to recite that the directors have passed upon the value of the property and that in their judgment it is of the value placed upon it and for which the stock is to be issued.

If the stockholders have passed a resolution authorizing the directors to increase the stock beyond the amount named in the charter as the amount with which the company will begin business, a resolution effectuating the increase may be passed.

If the corporation is to do business in any state requiring a certificate or statement to be filed, then authority should be given to the proper officers to execute such certificate in conformity with the laws of such state.

Finally, a direction should be placed upon the record, that the secretary forthwith file in the office of the secretary of state the statement required by Section 43, signed by the president and secretary, giving the address of the registered office in this state, by street and number, the name of the agent therein and in charge thereof, and upon whom process against the company may be served, and the names of the directors and other matters required by Sections 43 and 43a. (*Form 172.*)

These are the formal provisions, and any further or other provisions or special matters should be inserted at length. Any bills which have been paid or are to be paid should be passed upon and audited.

If the company is organized for the purpose of taking over an existing business, it is usual to send out a circular informing the customers, and sometimes a notice is published in the newspapers mentioning the

**Form
152**

change of the firm into a corporation, with a statement that all of the shares are taken up by the co-partners, or otherwise, in accordance with the facts.

A short form of minutes will be found below. (*Form 153.*)

Form 152.

MINUTES OF FIRST MEETING OF INCORPORATORS.

At a meeting of the incorporators of the
Company, held at No. _____ street, _____,
N. J. (designated in the certificate of incorporation as the location of the
principal and registered office of the company), on the _____ day of
_____, 189____, at _____ o'clock in the _____ noon, pursuant to
a written waiver of notice signed by all of the incorporators, fixing the
time and place aforesaid, the following proceedings were had:

The following incorporators were present in person: (*Insert names
and number of shares.*)

The following incorporators were present by proxy: (*Insert names,
names of proxies and number of shares.*)

On motion Mr. _____ was appointed chairman, and Mr.
_____ was appointed secretary of the meeting.

1. The chairman reported that the certificate of incorporation of the
company was recorded in the clerk's office of the county of
_____ on the _____ day of _____, and was filed on the
_____ day of _____, 1____, in the office of the secretary of state, and pre-
sented a certified copy of said certificate of incorporation.

2. The secretary presented and read the waiver of notice of the
meeting. (*See form 154.*)

3. The proxies above mentioned were presented and ordered to be
filed. (*See form 156.*)

4. The secretary presented a form of by-laws for the regulation of
the affairs of the company, which was read article by article and unani-
mously adopted. (*See forms 148-151.*)

5. Messrs.
_____ were appointed inspectors of election, and the oath was duly administered
to them. (*See form 157.*)

(*Note 1:* Unless the by-laws so provide it is not necessary that the inspectors of
election should be stockholders.)

(*Note 2:* Where a person not a subscriber for stock is to be elected director, it is cus-
tomary for one of the incorporators, just before the election takes place, to assign one
share to him, thus qualifying him for election as required by section 12, p. 25, *ante*. [*See
form 162.*] Such assignment should be noted in the minutes and a resolution should be
passed approving it.)

6. The inspectors having duly qualified, the polls were opened and
remained open until all of the incorporators had voted. The polls there-
upon being closed, the vote was canvassed and the inspectors reported
that the ballot showed that the following-named persons were unani-

mously elected directors, votes representing shares having
been cast for each of said persons, viz.:
(*Insert names of directors elected.*)

**Form
152**

7. Upon motion, duly made and seconded, and by the affirmative vote of all present, it was

ORDERED (*Insert resolution appointing agent in New Jersey as set forth in form 163*).

8. The secretary was ordered to send a copy of the foregoing resolution, duly certified by him under the corporate seal, to the said Trust Company.

9. Upon motion, duly made and seconded, and by the affirmative vote of all present, the following preambles and resolutions were adopted:

WHEREAS ha offered to sell to this company property as follows: (*Insert a brief description of the property showing its character*) in consideration of the issue of stock of this company to the amount of dollars (\$), par value, and

WHEREAS it appears to the stockholders that such property is necessary for the business of this company, and that the same is of the value of dollars,

RESOLVED that the board of directors of this company be and they hereby are authorized and directed to purchase the above-mentioned property for the said price and to issue said stock in payment thereof; *provided*, that, in the judgment of the board of directors, the said property is of the value above stated.

10. The secretary presented and read a waiver of notice of assessment of stock and of the time and place of payment thereof, signed by all the incorporators.

11. The board of directors were authorized to assess the stock subscribed by the said incorporators one hundred per cent., payable as and when called for by the board of directors, in accordance with the terms of the waiver.

12. Upon motion, duly made and seconded, and by the affirmative vote of all present, the following preamble and resolution were adopted:

WHEREAS it has been agreed between each of the incorporators and that the stock to be issued in payment of the property authorized to be purchased by the resolution set forth above, shall include the stock subscribed by the incorporators, as evidenced by the certificate of incorporation;

RESOLVED that the board of directors be and they hereby are authorized and directed to accept said property as full payment of the subscriptions for stock of the incorporators, and to issue full-paid stock to the incorporators or their assigns, to the amount of their respective subscriptions.

(*Note: This resolution is unnecessary if the amount with which the company begins business is paid in in cash, or is not included in the stock to be issued for the property in question.*)

13. Upon motion, duly made and seconded, and by the affirmative vote of all present, it was

14. Upon motion, duly made and seconded, and by the affirmative vote of all present, it was

15. A form of stock certificate was presented, and upon motion, duly made and seconded, was adopted.

(1) Certified copy of certificate of incorporation.

- (2) By-Laws.
- (3) Waiver of notice of the meeting.
- (4) Waiver of notice of assessment.
- (5) Form of proxy used in the meeting.
- (6) Oath and certificate of inspectors of election.
- (7) Form of stock certificate.

Secretary *pro tem.*

MINUTES OF FIRST MEETING OF DIRECTORS.

on the day of I, ,

Present: Messrs. (*names of directors present*), constituting [a majority *or all*] of the members of the board.

Mr.	was chosen temporary
chairman and Mr.	was chosen
temporary secretary of the meeting.	

1. The secretary presented and read a waiver of notice of the meeting, signed by all the directors, and the same was ordered filed. (*See form 158.*)
2. The minutes of the first meeting of incorporators were read.
3. The following were duly chosen president and vice-president of the company, respectively, to serve for one year and until their successors

are elected and qualify: (*Names of president and vice-president. The president must be a director, section 13, p. 30 ante.*) **Form 153**

4. The following gentlemen were duly appointed secretary and treasurer, respectively, to serve during the pleasure of the board. (*Insert names.*)

The president thereupon took the chair.

5. It was ordered that the secretary take the oath of office and subscribe the written oath in the form presented at this meeting. The secretary thereupon took and subscribed the oath and entered upon the discharge of his duties. (*See form 159.*)

6. It was ordered that the treasurer give a bond in the sum of dollars, in the form presented at this meeting, which was approved by the board, and submit said bond to the board for approval as to the sufficiency of the surety. The treasurer thereupon presented his bond signed by himself as principal and by

as surety, and the same was approved and order to be filed. (*See form 160.*)

7. Messrs.

were appointed members of the executive committee; Mr. to be the chairman thereof.

8 The secretary was authorized and directed to procure the proper corporate books.

9. Upon motion duly made and seconded, it was

RESOLVED that the treasurer be and he hereby is authorized to open a bank account in behalf of the company with the

Bank of

FURTHER RESOLVED that until otherwise ordered said bank be and hereby is authorized to make payments from the funds of this company on deposit with it upon and according to the check of this company signed by its (*treasurer or other officer, in accordance with the by-laws*).

10. Upon motion, duly made and seconded, it was

RESOLVED that an office of the company be established and maintained at in the City of , State of and that meetings of the board of directors from time to time may be held either at the principal office in the State of New Jersey, or at such office in the City of or elsewhere, as the board of directors shall from time to time order.

11. Upon motion, duly made and seconded, it was

RESOLVED that this company accept the offer of to sell to this company the property described in the resolution of the stockholders passed authorizing the purchase thereof, and the board of directors do hereby adjudge and declare that said property is of the fair value of

**Form
153**

dollars and that the same is necessary for the business of this company.

FURTHER RESOLVED that the proposed agreement for the sale of said property presented at this meeting be and the same hereby is approved as to form, and the and of the company are hereby authorized and directed to execute said agreement in the name and on behalf of this company and to affix the corporate seal thereto. (*See form 161.*)

FURTHER RESOLVED that the president and treasurer be and they hereby are authorized and directed to issue the full paid capital stock of this company to the aggregate amount of as provided in said agreement.

12. Upon motion, duly made and seconded, it was

RESOLVED that an assessment of one hundred per cent. be levied upon the shares of stock subscribed by the incorporators, as evidenced by the certificate of incorporation.

FURTHER RESOLVED that, in compliance with the resolution of the incorporators' meeting, the company accept in payment of said subscriptions and assessment the property agreed to be sold to the company as set forth in the preceding resolutions.

13. Upon motion, duly made and seconded, it was

RESOLVED that the proper officers of this company be and they hereby are authorized and directed in behalf of the company, and under its corporate seal, or otherwise, to make and file the certificate or statement required by law to be filed in any state in which the officers of the company shall find it necessary to file the same to authorize the company to transact business in such state.

14. The secretary was ordered to make and file in the office of the secretary of state of New Jersey the statement of officers, directors, etc., required by section 43 (as amended) of "An Act concerning corporations (Revision of 1896)" of New Jersey, and the president was also directed to sign such statement. (*See form 172.*)

15. Upon motion, it was

RESOLVED that the president and secretary be and they hereby are authorized and directed to make and to file in the office of the secretary of state a certificate stating that the capital stock of this company has been paid, \$ in cash, and \$ by the purchase of property.

(*Note:* This certificate is not ordinarily filed until the full amount of capital with which the company is authorized to do business has been paid in. See sec. 25, p. 41.)

16. The secretary was directed to insert in the minute book for the purpose of reference a copy of each of the following papers presented at this meeting:

- (1) Waiver of notice of the meeting.
- (2) Secretary's oath.
- (3) Treasurer's bond.

(4) Statement of officers and directors filed in the office of the secretary of state of New Jersey.

(5) Certificate of the secretary of state as to filing such statement.

(6) Agreement between and this company for the purchase of property and issue of stock therefor.

(7) Certificate of payment of capital stock.

No further business was presented and on motion the meeting adjourned.

Secretary.

Form 154.

[Section 16, p. 32, *ante.*]

WAIVER OF NOTICE OF MEETING OF INCORPORATORS.

We, the undersigned, being all the incorporators of the Company, organized under the laws of the State of New Jersey, do hereby waive notice of the time, place and purpose of the first meeting of the incorporators of the said company, and do fix the day of , 189 , at o'clock in the noon, as the time, and the principal office of the company, N. J., as the place of said meeting.

And we do hereby waive all the requirements of the statutes of New Jersey as to the notice of this meeting, and the publication thereof; and we do consent to the transaction of such business as may come before said meeting.

Dated , 189 .

Form 155.

[Section 22, p. 40, *ante.*]

WAIVER OF NOTICE OF ASSESSMENT.

We, the undersigned, being all the subscribers to the capital stock with which the Company is authorized by its certificate of incorporation to begin business, do hereby waive thirty days' notice of the time and place of the payment of such subscription, and we do also waive all the requirements of the laws of the State of New Jersey as to notice of assessment and payment, and we agree to pay any part or all of the same to the treasurer of the company on demand, and at such time and in such amounts as the company, by its board of directors, may direct.

Dated , 189 .

**Forms
154-155**

**Forms
156-157****Form 156.**[Section 17, p. 32, *ante.*]**PROXY—FIRST MEETING OF INCORPORATORS.**

KNOW ALL MEN BY THESE PRESENTS,

That I, the undersigned, a subscriber for _____ shares of the capital stock of the _____ Company, organized under the laws of the State of New Jersey, do hereby constitute and appoint

_____ my true and lawful attorney, in my name, place and stead, to vote upon the stock subscribed for by me or standing in my name, as my proxy, at the meeting of the incorporators and subscribers to the capital stock of the said company, to be held at the company's principal office _____, N. J., on the _____ day of _____, 189 _____, or on such other day as the meeting may be thereafter held by adjournment or otherwise according to the number of votes I am now or may then be entitled to cast, hereby granting the said attorney full power and authority to act for me and in my name at the said meeting or meetings, in voting for directors of the said company or otherwise, and in the transaction of any other business which may come before the meeting, as fully as I could do if personally present, and hereby expressly ratifying and confirming all that my said attorney may do in my place, name and stead.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of _____, 189 _____.

Witness :

[L. S.]

*(Attach and cancel 25-cent internal revenue stamp.)***Form 157.**[See p. 56, *ante.*]**INSPECTORS' OATH AND CERTIFICATE.**

STATE OF NEW JERSEY, } ss.
COUNTY OF _____

_____ and _____, being severally sworn upon their respective oaths, do promise and swear that they will faithfully, honestly and impartially perform the duties of inspectors of election, and will to the best of their skill and ability conduct the election to be held this day for directors of the

_____ Company, and a true report make of the same.

Subscribed and sworn to this _____ }
day of _____, 189 _____, before me }

WE, THE SUBSCRIBERS, INSPECTORS OF ELECTION, appointed by the stockholders of the company above named, at their meeting held this day of _____, A. D. 189 _____, do report that having taken an oath

impartially to conduct the election, we did receive the votes of the stockholders by ballot.

We report that votes were cast, and that the following persons received the number of votes set opposite their respective names, to wit:

Forms
158-159

FOR DIRECTORS.	NUMBER OF VOTES.
All of which is respectfully submitted this day of , 189	
at , New Jersey.	
Inspectors.	

Form 158.

WAIVER OF NOTICE OF FIRST MEETING OF DIRECTORS.

We, the undersigned, being the board of directors elected by the stockholders of the Company, organized under the laws of the State of New Jersey, do hereby waive notice of the time and place of the first meeting of the said board of directors, and of the business to be transacted at said meeting.

We designate the day of , 189 , at o'clock in the in the noon as the time, and as the place of said meeting. The purposes of said meeting being to elect officers, to authorize the issuing of the stock of the said company, to authorize the purchase of property necessary for the business of the company, and to transact such other business as may be necessary or advisable to complete the organization of said company and facilitate the carrying on of its contemplated business.

Dated , 189 .

Form 159.

[Section 13, p. 30, *ante.*]

SECRETARY'S OATH.

STATE OF }
COUNTY OF } ss.

the secretary of the company above named, being by me duly sworn upon his oath deposes and says that he will faithfully discharge the duties of secretary of the aforesaid corporation to the best of his skill and ability.

Subscribed and sworn to before me }
this day of , 189 . }

**Forms
160-161****Form 160.**[Section 13, p. 30, *ante*.]**TREASURER'S BOND.**

KNOW ALL MEN BY THESE PRESENTS, that we,
 of _____ as principal, and
 of _____, as surety, are held and firmly bound unto
 the _____ Company, a corporation of the State of New
 Jersey, its successors and assigns, in the sum of

_____ dollars (\$ _____), lawful money of the United
 States, to be paid to such corporation, its successors and assigns, for
 which payment, well and truly to be made, we bind ourselves, our execu-
 tors and administrators, jointly and severally, firmly by these presents.

IN WITNESS WHEREOF, we have hereunto set our hands and seals
 this _____ day of _____, 189 .

The condition of the above obligation is that,

WHEREAS, the said
 has been duly elected and is about to enter upon the duties of his office as
 treasurer of the above-named company,

Now, THEREFORE, if he shall in all respects fully and faithfully dis-
 charge his duties as such treasurer, so long as he shall hold the said office
 or continue therein during the term for which he is now or may hereafter
 be elected, appointed, or hold over, and also, if, in case of his death, res-
 ignation or removal from office from any cause, all the books, papers,
 vouchers, money or other property of whatever kind in his possession
 belonging to the corporation, shall be forthwith restored to the corpora-
 tion, then this obligation is to be void, otherwise to be in full force and
 virtue.

Signed, sealed and delivered in the presence of

[L. S.]

[L. S.]

(*Attach and cancel 50-cent internal revenue stamp.*)

Form 161.**AGREEMENT FOR THE SALE OF PROPERTY IN EXCHANGE
FOR STOCK.**

AN AGREEMENT made this _____ day of _____, 1 _____, by and
 between _____ of _____

(hereinafter called the "vendor ") of the first part, and

a corporation organized under the laws of the State of New Jersey
 (hereinafter called the "company"), of the second part.

WHEREAS, The vendor the owner of the property and rights hereinafter described; and

WHEREAS, The company has been duly organized pursuant to the laws of the State of New Jersey, with an authorized capital stock of \$, divided into shares of the par value of \$ each; and

WHEREAS, The company desires by an issue of its capital stock as hereinafter provided, to purchase and acquire said property and rights; and

WHEREAS, The board of directors of the company have ascertained, adjudged and declared that the said property and rights are of the fair value of dollars (\$), and that the acquisition of said property and rights is necessary for the business of the company and to carry out its contemplated objects:

NOW THEREFORE, THIS AGREEMENT WITNESSETH:

I. That the vendor ha sold, assigned, transferred and set over, and do hereby sell, assign, transfer and set over unto the company, its successors and assigns, all right, title and interest in and to the following described property, to wit: *(Insert description of property.)*

II. The company hereby agrees, in consideration of said sale and upon the delivery of said property to it, to issue to the vendor and nominees as hereinafter provided, or to such other nominees as the vendor shall in writing hereafter direct, at such times and in such amounts as they shall respectively direct, certificates of stock of the company to the aggregate amount of shares, and said shares shall be deemed to be and are hereby declared to be full-paid shares and not liable to any further call, and the holders of such stock shall not be liable to any further payment thereon.

III. Certificates of said stock shall be issued in part as follows:
(Here insert names of incorporators and number of shares subscribed by each.)

IV. The balance of the certificates of said stock shall, unless otherwise directed in writing by the vendor , be issued to the vendor .

V. The delivery of the certificates for said shares to the above-named parties and their respective receipts for the same shall be a full discharge of each of the parties hereto to the extent thereof.

It is understood and agreed that the shares to be issued to the parties named in paragraph III hereof are the shares subscribed by the incorporators of the company, as set forth in the certificate of incorporation.

VI. The vendor hereby covenant and agree with the company, upon the request and at the cost of the company, to execute and do all such further assurances and things as shall reasonably be required by the company for vesting in it the property and rights agreed to be hereby sold, and giving to it the full benefit of this agreement.

[A clause is often inserted by which the vendors covenant not to engage in a similar business for a definite term and within a specified area. As to the validity

**Forms
162-163**

of such covenants see *Trenton Potteries Co. v. Oliphant*, 56 N. J. Eq., 680. In that case Vice-Chancellor Grey held the following covenant to be void "because of its too extended area of exclusion":—"We also agree that we will not, directly or indirectly, engage in the business of the manufacture of potteryware except in the capacity of your agent or employé or as your assigns, within any state of the United States of America or within the District of Columbia, except in the State of Nevada and the territory of Arizona." See p. 174, *ante*.]

WITNESS, The hand and seal of the vendor and the corporate seal of the company, attested by the signatures of its officers thereunto duly authorized, the day and year first above written.

In presence of

Form 162.

ASSIGNMENT OF SUBSCRIPTION.

KNOW ALL MEN BY THESE PRESENTS,

That I,

in consideration of one dollar, lawful money of the United States, to me paid before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto my right, title and interest as a subscriber to and an incorporator of the _____ Company, a corporation organized under the laws of the State of New Jersey, to the extent of _____ shares, and I do hereby request and direct the said company to issue the certificate for said _____ shares to and in the name of said _____ or such other person as he may name.

WITNESS my hand and seal this _____ day of _____, 189____.
Sealed and delivered in the presence of _____ [L. s.]

(Attach and cancel internal revenue stamps at the rate of 2 cents for each \$100 face value.)

Form 163.

[Sections 33, 44, pp. 48, 60, *ante*.]

APPOINTMENT OF AGENT IN CHARGE OF PRINCIPAL OFFICE.

At a meeting of the _____ of _____, held at the office of the _____ company on the _____ day of _____, 189____, on motion, duly seconded, it was

"ORDERED, (1) That in compliance with the laws of the State of New Jersey, this corporation have and continuously maintain a principal office and place of business within the State of New Jersey, and have an agent at all times in charge thereof, upon whom process against this corporation may be served, and therein keep the stock books

NOTICE OF ASSESSMENT OF STOCK.

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Form
164

and transfer books for the inspection of all who are authorized to see the same and for the transfer of stock. That the books in which the transfers of stock shall be registered and the books containing the names, addresses and number of shares respectively of the shareholders shall be at all times during the usual hours of business open to the examination of every stockholder at said principal office.

That the name of this corporation be at all times conspicuously displayed at the entrance of its principal office in this State.

And be it further ORDERED, until this resolution be duly rescinded,

(2) That such office and place of business be in and at the office of the

Trust Company, No.

street,

, New Jersey, and that this company be registered with the said

trust company.

(3) That the Trust Company, being by statute authorized to act in New Jersey as the agent of corporations, be and hereby is appointed the agent of this corporation in charge of said principal office, and upon whom legal process against this corporation may be served within the State of New Jersey, and also the transfer agent of the stock of this company.

(4) That the stock certificates of this company be registered and countersigned by said trust company as transfer agent."

I,

the secretary of

have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do hereby certify the same to be a correct and true transcript therefrom and the whole of said original resolution.

Given under my hand and the seal of the company, this
day of , 189 .

{ COR-
PORATE
SEAL. }

Secretary.

ASSESSMENT AND PAYMENT OF CAPITAL STOCK.

Form 164.

[Section 22, p. 40, *ante*.]

NOTICE OF ASSESSMENT OF STOCK.

Notice is hereby given that by resolution of the board of directors, duly authorized by the stockholders, an assessment of per cent. on the capital stock of the Company is now called

for, payable to treasurer, No.

street, , on or before 189 .

Checks should be drawn to the order of the treasurer.

By order of the board,

Secretary.

[Unless the subscribers waive such notice, it is necessary to give thirty days' notice of the time and place of payment of each installment as called by the directors. This notice may be served on the subscribers personally or by mail, or it may be published in a newspaper in the county where the principal office is located.]

**Forms
165-166****Form 165.**[Section 23, 24, pp. 40, 41, *ante.*]**NOTICE OF SALE OF STOCK FOR NON-PAYMENT OF ASSESSMENTS.**

SALE OF STOCK OF THE

COMPANY.

Notice is hereby given that pursuant to an order of the board of directors, and in pursuance of the statute in such case made and provided, the undersigned, as treasurer of the _____ Company, will sell at public auction on the _____ day of _____, at _____ o'clock in the _____ noon, at _____, _____ shares of the capital stock of said company, standing in the name of _____, or so many of said shares as will pay \$ _____, being the amount of unpaid assessments on said shares now due from said _____, and also the interest thereon from _____ to the date of sale, and all necessary incidental charges.

\$ _____ has been paid the company on each of said shares. An assessment of \$ _____ is now due on each of said shares, which assessment the purchaser must forthwith pay on each share in addition to the amount of his bid.

Dated,

Treasurer.

[This notice must be printed once a week for three weeks and mailed to the delinquent stockholder prior to the first publication.]

Form 166.[Sections 25, 43a, pp. 41, 59, *ante.*]**CERTIFICATE OF PAYMENT OF CAPITAL STOCK**

of the

The location of the principal office in this state is at No.

street, in the

of

, County of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

In accordance with the provisions of "An act concerning corporations (Revision of 1896)," we, _____ president, and _____, secretary of the

Company,

a corporation of the State of New Jersey, do hereby certify that

_____ dollars, being the [amount of capital stock with which said company commenced business, *or*, total amount of capital stock of said company] as authorized by its certificate of incorporation filed in the Department of State, on the _____ day of

CERTIFICATE OF PAYMENT.

299

**Form
167**

, A. D. 18 , has been fully paid in;
dollars thereof by the purchase of property and
dollars thereof in cash.

WITNESS our hands the day of , A. D. 189 .
President.
Secretary.

(Attach and cancel 10-cent internal revenue stamp.)

STATE OF
COUNTY OF

} ss.

and president,
the , secretary of
Company,
being severally duly sworn, on their respective oaths depose and say that
the foregoing certificate by them signed is true.

Subscribed and sworn to before }
me, this day of A. D. 189 . }
President.
Secretary.

Form 167.

[Sections 25, 43a, pp 41, 59, ante.]

**CERTIFICATE OF PAYMENT OF ADDITIONAL CAPITAL
STOCK**

of the

The location of the principal office in this State is at No. of
street, in the , County of

The name of the agent therein and in charge thereof, upon whom
process against this corporation may be served, is

In accordance with the provisions of "An act concerning corporations
(Revision of 1896)," we president,
and , secretary of the
Company,

a corporation of the State of New Jersey, do hereby certify that
dollars, being the total
amount of additional capital stock of said company as authorized by the
certificate of increase of capital stock and assent of stockholders thereto,
filed in the Department of State, on the day of
A. D. 18 , has been fully paid in;
dollars thereof by the purchase of property and
dollars thereof in cash.

WITNESS our hands the day of , A. D. 189 .
President.
Secretary.

(Attach and cancel 10-cent internal revenue stamp.)

(This form of certificate is used where there is an increase of capital stock beyond
the total amount authorized by the certificate of incorporation.)

Forms
168-169STATE OF
COUNTY OF

} ss.

and
thePresident,
Secretary of
Company,

being severally duly sworn, on their respective oaths depose and say that the foregoing certificate by them signed is true.

Subscribed and sworn to before
me, this
day of , A. D. 189 . }President.
Secretary.

ANNUAL AND SPECIAL MEETINGS.

Form 168.

NOTICE OF ANNUAL MEETING.

THE ANNUAL MEETING of the stockholders of the Company will be held on the day of , 189 , at o'clock in the noon, at the principal office of the company, street, New Jersey, for the purpose of electing a board of directors and receiving and acting upon the reports of the officers (*insert any special business to be transacted*), and for the transaction of such other business as may properly come before the meeting.

In accordance with the laws of the State of New Jersey, no stock can be voted on which has been transferred on the books of the company, within twenty days next preceding this election.

Dated , 189 .

Secretary.

Form 169.

[Section 17, p. 32, *ante*.]

PROXY—STOCKHOLDERS' MEETING.

KNOW ALL MEN BY THESE PRESENTS,

That the undersigned, being the owner of shares of the capital stock of the Company, do hereby constitute and appoint my true and lawful attorney, in my name, place and stead, to vote upon the stock owned by me or standing in my name, as my proxy, at the annual (or, *special*) meeting of the stockholders of the said company, to be held at the company's principal office, street, N. J., on the day of , 189 , or on such other day as the meeting may be thereafter held by adjournment or otherwise, according to the number of votes I am now or may then be entitled to cast, hereby granting the said attor-

ney full power and authority to act for me and in my name at the said meeting or meetings, in voting for directors of the said company or otherwise, and in the transaction of such other business as may come before the meeting, as fully as I could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may do in my place, name and stead.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of _____, 189 .

Witness :

(Attach and cancel 25-cent internal revenue stamp.)

Form 170.

MINUTES OF ANNUAL MEETING OF STOCKHOLDERS.

Minutes of the annual meeting of stockholders of Company, held at the office of the company, _____ street, N. J., on the _____ day of _____, 1899, at _____ o'clock in the noon, pursuant to _____ days' notice, as required by the by-laws, mailed to each stockholder on the _____ day of _____, 1899, at his, her or its address, as the same appeared on the books of the company.

There were present: (*Insert names of stockholders present in person and number of shares held by each; also names of stockholders represented by proxy, names of proxies and number of shares represented.*) Being _____ of the stock of the company issued and outstanding.

The stock ledger and transfer book were presented, together with a list of the stockholders entitled to vote at the ensuing election, alphabetically arranged, showing the residence of each and the number of shares held by each, for the inspection of any entitled to see the same.

The meeting was called to order by Mr. _____ who, upon motion, duly made and seconded, was elected chairman.

Mr. _____ was appointed secretary of the meeting.

Upon motion, the reading of the minutes of the last preceding meeting was _____

The report of the president was presented, and action taken thereon, as follows: (*Here insert president's report.*)

The report of the treasurer was presented, and action taken thereon, as follows: (*Here insert treasurer's report.*)

The reports of the following committees were presented: (*Here insert reports, if any, of committees.*)

Upon motion, duly made and seconded, the meeting then proceeded to the election of a board of _____ directors to hold office for the ensuing year, or until such time as others should be elected and qualify in their stead; and Messrs. _____ and _____ were appointed as inspectors of election, neither of them being a candidate for the office of director.

Form
170

**Forms
171-172**

The polls were then duly opened, and remained open one hour. The votes were then canvassed by the inspectors, who subsequently rendered the following report : (*Here insert inspectors' report; see form 157.*)

The chairman thereupon declared the following gentlemen elected directors for the ensuing year: (*Insert names of persons receiving greatest number of votes.*)

The following unfinished business was then taken up: (*Here insert record of any unfinished business.*)

The following new business was then presented: (*Here insert a record of any new business taken up.*)

The secretary was directed to insert in the minute book, for the purpose of reference, a copy of each of the following papers presented at this meeting :

- (1) Notice of the meeting.
- (2) List of the stockholders, alphabetically arranged.
- (3) Certificate of inspectors of election.
- (4) Form of proxy used in the meeting.

No further business coming before the meeting, it was, upon motion, duly made and seconded, declared adjourned.

Secretary.

Form 171.

[Section 46, p. 69, *ante.*]

CALL OF MEETING BY THREE STOCKHOLDERS.

WHEREAS, a legal meeting of the stockholders of the Company cannot be otherwise called the undersigned, three stockholders of said company, having voting powers, do hereby call a meeting of said stockholders to be held at the registered office of the company in the City of _____ on the _____ day of _____ at _____ o'clock in the _____ noon, for the purpose of (*state the object of the meeting*).

Dated _____

REPORTS.**Form 172.**

[Sections 43, 43a, pp. 58, 60, *ante.*]

ANNUAL REPORT TO SECRETARY OF STATE.

STATEMENT BY CORPORATION TRANSACTING BUSINESS IN THE STATE OF
NEW JERSEY.

As required by the laws of the State of New Jersey, the Company, organized under the laws of the State of New Jersey, renders the following statement, to be filed in the Department of State of New Jersey.

To face page 302 of "Dill on New Jersey Corporations,"
Second Edition.

ANNUAL REPORT TO SECRETARY OF STATE. Act of 1900. 302a

Section 43 having been amended by Chapter 124 of the Laws of 1900, the
form below should be used in place of Form 48 on page 302.

Form 48.

[Sections 43, 43a, pp. 58a, 60, *ante.*]

ANNUAL REPORT TO SECRETARY OF STATE.

The _____ company, organized and registered
under the laws of the state of New Jersey, does hereby make the following report
in compliance with the provisions of an act of the legislature of New Jersey entitled
"An Act Concerning Corporations (Revision of 1896)," and the various acts
amendatory thereof and supplemental thereto:

FIRST.

The name of the corporation is

SECOND.

The location of the registered office is
and
is the agent upon whom process against the corpora-
tion may be served.

THIRD.

The character of the business is
and as otherwise specified in the certificate of incorporation.

FOURTH.

The amount of the authorized capital stock is \$
The amount actually issued and outstanding is \$

FIFTH.

The names and addresses of all the directors and officers and the time when
the term of office of each expires are as follows:

[OVER.]

302b Act of 1900. ANNUAL REPORT TO SECRETARY OF STATE.

Names of Directors,

P. O. Address.

Expiration of Term.

Officers:

President:

Vice-President:

Treasurer:

Secretary:

SIXTH.

The next annual meeting of the stockholders for the election of directors is appointed to be held on the

SEVENTH.

The name of the corporation has [or not] been at all times displayed at the entrance of its registered office in this state, and the corporation has [or not] kept at its registered office in this state a transfer book, in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law.

IN WITNESS WHEREOF, this report is signed by two of the directors of
the said corporation this day of 1900.

For railroad and canal corporations and foreign corporations the above form may be used, omitting "Seventh."

The location of the principal office in the State of New Jersey is at
street, , New Jersey. **Form 173**

The agent of the company in charge of said principal office, upon
whom process against the corporation may be served, is
Trust Company, a domestic corporation, whose location is at
street, , New Jersey.

The business of the company is that of
and otherwise, as provided in the certificate of incorporation.

An election for directors of said company was held at
New Jersey, on the day of , 189 .

The names of the directors elected at that time, as well as all other
directors (if any), with the date of the election or appointment, term of
office and post-office address of each, are as follows:

NAME.	POST-OFFICE ADDRESS.	TERM OF OFFICE.	DATE OF ELECTION OR APPOINTMENT.

The following is a list of the officers of this company, showing the
date of the election or appointment, term of office and post-office address
of each.

NAME.	POST-OFFICE ADDRESS.	TERM OF OFFICE.	DATE OF ELECTION OR APPOINTMENT.
President, 1st Vice-Pres't, 2d Vice-Pres't, Secretary, Treasurer,			

Dated , 189 .

The foregoing statement is correct and true.

Attest:

President.
Secretary.

Form 173.

[Section 203, p. 117, *ante*.]

ANNUAL REPORT TO STATE BOARD OF ASSESSORS.

Report of the Company.

President. Date of incorporation,
Treasurer. Principal office in New Jersey,
[Give street and number.]
Secretary. Name of agent in charge,

This report is required by the State Board of Assessors of New Jersey under and by
virtue of the provisions of "An Act to provide for the imposition of state taxes upon

Form
173

certain corporations and for the collection thereof," approved April 18, 1884, and the acts amendatory and supplementary thereto, and in accordance with said acts this report *must* be filed with said board on or before the first Tuesday of May annually.

All corporations incorporated under the laws of the State of New Jersey and not specially subject to other tax, as telegraph, telephone, cable, express, gas, electric light, parlor, palace or sleeping car, life, fire, marine, live stock, casualty or accident insurance, oil or pipe line companies, shall make annual return to the State Board of Assessors of such information as may be required by said board to carry out the provisions of this act, and shall pay an annual license fee or franchise tax of one-tenth of one per centum on all amounts of capital stock issued and outstanding, up to and including the sum of three million dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one-twentieth of one per centum, and the further sum of fifty dollars per annum per one million dollars, or any part thereof, on all amounts of capital stock issued and outstanding in excess of five million dollars; *provided*, that this act shall not apply to railway, canal or banking corporations,* or to savings banks, cemeteries or religious corporations, or to purely charitable or educational associations, or manufacturing or mining corporations, at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this state; if any manufacturing or mining company carrying on business in this state shall have less than fifty per centum of its capital stock issued and outstanding invested in business carried on within this state, such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this state, but shall be entitled, in the computation of such tax, to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate so used in manufacturing or mining.

After the tax has been levied by the State Board of Assessors any corporation which desires to appeal to said board for a review of the assessment and a readjustment of the tax so levied must file with said board within three months from the date of assessment, a petition of appeal, duly verified according to law, stating specifically the grounds upon which the appeal is taken, and the reasons why the tax is considered excessive and unjust. If the petition of appeal is not filed within three months, the right of appeal to the State Board shall be considered and treated as having been waived and the amount of tax levied shall be payable and collected as other taxes levied by said board.—P. L. 1897, Chapter 89.

THIS REPORT MUST SHOW EXISTING CONDITIONS JANUARY 1, 1

TRENTON, N. J.,

All of the following questions *must* be answered:

1. What is the amount of your capital stock authorized? \$
2. Into how many shares is it divided?
3. How many shares are fully paid, either in cash or by property purchased?
4. How many shares are partially paid?
5. What is the amount of your capital stock issued? \$
6. What is the nature of the business of your corporation?
7. Is your corporation engaged in manufacturing or mining?
8. If so, state where, (a) In New Jersey,
City or town,
Street and number,
(b) If in other places, state where,
City or town,
Street and number,
9. What is the amount of your capital stock invested in manufacturing or mining in New Jersey? \$
10. What is the local assessed valuation for 189 , of your corporation's real and personal estate used in manufacturing or mining in New Jersey? Real estate, \$ Personal, \$

* Or to trust companies (P. L. 1899, p. 467.)

AMENDED CERTIFICATE OF INCORPORATION.

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I, the undersigned, do hereby certify as

of the **Form 174**

[President or Treasurer.]

Company, that the foregoing return

is correct and true.

[L. S.]

Address,

Witness.

The above certificate is made in conformity with section 3 of the act of April 18, 1884, which provides that if any officer of any company required by this act to make a return, shall in such return make a false statement, he shall be deemed guilty of perjury.

AMENDMENTS AND CHANGES.

Form 174.

[Sections 26a, 43a, pp. 42, 59, ante.]

AMENDED CERTIFICATE OF INCORPORATION BEFORE PAYMENT OF CAPITAL.

(Set out in full the body of the certificate of incorporation as desired to be amended, then add the following attestation clause):

THE UNDERSIGNED, being all the incorporators of the

Company, a corporation organized under and in pursuance of an act of the legislature of the State of New Jersey entitled "An Act concerning corporations (Revision of 1896)," the certificate of incorporation of which was duly recorded in the office of the clerk of the County of _____, New Jersey, on the _____ day of _____, 1899, and duly filed in the office of the secretary of state of New Jersey, on the _____ day of _____, 1899, no part of the capital stock of said corporation having been paid in, do hereby, pursuant to the provisions of section 1 of an act of the legislature of the State of New Jersey, entitled "A supplement to an act entitled 'An Act concerning corporations (Revision of 1896),' approved April twenty-first, one thousand eight hundred and ninety-six," approved April 19, 1898, amend said certificate of incorporation so that the same shall read as hereinbefore set forth, and accordingly do hereunto set our hands and seals.

Dated _____, 18____.

(Add acknowledgment [Form 7]. Attach and cancel 10-cent internal revenue stamp to the certificate and also to the acknowledgment; then add an affidavit as follows):

STATE OF _____ }
COUNTY OF _____ } ss.:

On this _____ day of _____, A. D. 1____, before the under-
signed personally appeared _____, who being by me

Form 175 severally duly sworn did severally depose and say they are all of the original incorporators of the _____ Company as set forth in the foregoing certificate, and that no part of the capital stock of said _____ Company has been paid in.

Subscribed and sworn to before me }
 at the City of _____, the }
 day and year aforesaid.

(The amended certificate should be first recorded in the office of the clerk of the county where the original certificate of incorporation was recorded, and then filed in the office of the secretary of state. If the principal office is changed to another county, record also in the county where the new principal office is located.)

Form 175.

[Sections 27, 28, pp. 42, 43, 44, *ante.*]

CERTIFICATE OF AMENDMENT OF CHARTER, INCREASE OF CAPITAL, &C.

[This form may be used for changing the nature of the business, changing the name, increasing the capital stock, decreasing the capital stock, changing the par value of shares of the capital stock, changing the location of the principal office, extending the corporate existence, creating a class or classes of preferred stock, and for making "such other amendment, change or alteration as may be desired." Section 27, pp. 42, 43, *ante.*]

The location of the principal office in this state is at No. _____ street, in the _____ of _____, County of _____

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is _____

RESOLUTION OF DIRECTORS.

The board of directors of the _____ Company, a corporation of New Jersey, on this _____ day of _____, A.D. 189 _____, do hereby resolve and declare that it is advisable that

and do hereby call a meeting of the stockholders, to be held at the company's office, in the City of _____, on the _____ day of _____, 189 _____, at _____ . M., to take action upon the above resolution.

CERTIFICATE OF CHANGE.

The _____ Company, a corporation of New Jersey, doth hereby certify that it has

said _____ having been declared by resolution of the board of directors of said corporation to be advisable, and having been duly and regularly assented to by the vote of two-thirds in interest of each class of stockholders having voting powers, at a meeting duly

CERTIFICATE OF AMENDMENT, CHANGE, &C.

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called by the board of directors for that purpose; and the written assent of said stockholders is hereto appended. **Form 175**

In witness whereof, said corporation has caused this certificate to be signed by its president and secretary, and its corporate seal to be hereto affixed, the day of , A.D. 189 .

President.
Secretary.

[L.S.]

(Attach and cancel 10-cent internal revenue stamp.)

STATE OF }
COUNTY OF } ss.

Be it remembered that on this day of , A.D. 189 , before me, the subscriber, a personally appeared

secretary of the Company, the corporation mentioned in and which executed the foregoing certificate, who being by me duly sworn, on his oath says that he is such secretary, and that the seal affixed to said certificate is the corporate seal of said corporation, the same being well known to him; that

is president of said corporation, and signed said certificate and affixed said seal thereto, and delivered said certificate by authority of the board of directors and with the assent of at least two-thirds in interest of each class of stockholders of said corporation having voting powers as and for his voluntary act and deed, and the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

And he further says that the assent hereto appended is signed by at least two-thirds in interest of each class of the stockholders of said corporation having voting powers, either in person or by their several duly constituted attorneys in fact, thereunto duly authorized in writing.

Subscribed and sworn to before me }
the day and year aforesaid. }

(Attach and cancel 10-cent internal revenue stamp.)

STOCKHOLDERS' ASSENT TO CHANGE.

We, the subscribers, being at least two-thirds in interest of each class of the stockholders of the Company having voting powers, having, at a meeting regularly called for the purpose, voted in favor of

do now, pursuant to the statute, hereby give our written assent to said change.

Witness our hands this day of , A. D. 189

STOCKHOLDERS.

NO. OF SHARES.

**Forms
176-177****Form 176.**[Section 28a, p. 44, *ante.*]**CERTIFICATE OF CHANGE OF LOCATION OF THE PRINCIPAL OFFICE OF
THE COMPANY.****RESOLUTION OF DIRECTORS.**

"The Board of Directors of the
Company, a corporation of New Jersey, on this day of
A. D. 189 , do hereby resolve and order that the
location of the principal office of this corporation within this state be,
and the same hereby is, changed from
in the County of , to No. street,
in the County of

The name of the agent therein and in charge thereof, upon whom
process against this corporation may be served, is

CERTIFICATE OF CHANGE.

The Company, a corpora-
tion of New Jersey, doth hereby certify that the foregoing is a true copy
of a resolution adopted by the board of directors by a
vote of the members thereof at a meeting held as therein stated.

IN WITNESS WHEREOF, said corporation has caused this certificate to
[L. s.] be signed by its president and secretary, and its corporate seal
to be hereby affixed, the day of , A. D., 189 .
President.
Secretary.

(Attach and cancel 10-cent internal revenue stamp.)

STOCK CERTIFICATES.**Form 177.**[Section 19, p. 37, *ante.*]**COMMON STOCK.**

INCORPORATED AND REGISTERED UNDER THE LAWS OF THE STATE
OF NEW JERSEY.

Capital Stock, - - - - - \$
[Number]

The Company. [Shares.]

THIS IS TO CERTIFY, that
is the registered holder of shares
of the capital stock of this company, transferable only on

PREFERRED STOCK CERTIFICATE.

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{ SEAL. } the books of the company by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed. **Form 178**

WITNESS the seal of the company and the signatures of its president and treasurer this _____ day of _____, 189 .
President.
Treasurer.

Shares \$100 each.

(On original issues of stock attach to the face of the certificates of stock internal revenue stamps at the rate of 5 cents for each \$100 face value.)

Form 178.

[Sections 18, 19, pp. 33-37.]

PREFERRED STOCK.

[Number]

[Shares]

INCORPORATED AND REGISTERED UNDER THE LAWS OF THE STATE OF NEW JERSEY.

Capital Stock, - - - - \$

Preferred Stock, \$ Common Stock, \$

The _____ Company.

THIS IS TO CERTIFY, that _____ is the registered holder of _____ shares of the preferred capital stock of this company, transferable only on the books of this company, in person or by duly authorized attorney, upon surrender of this certificate.

This stock is part of an issue amounting in all to \$ _____ par value, authorized by the certificate of incorporation of the company, filed in the office of the secretary of state of the State of New Jersey, on the _____ day of _____, 189 .

The holders of this preferred stock are entitled to receive, and the company is bound to pay, a fixed yearly dividend of _____ per centum, per annum, payable half yearly, before any dividend shall be set apart or paid on the general stock, and the dividends of the preferred stock are cumulative. The preferred stock is subject to redemption at par on the _____ day of _____, 189 , and the holders of the preferred stock may choose _____ directors, and the holders of the general stock may choose _____ directors of the company.

WITNESS the seal of the company and the signatures of its president and treasurer, Jersey City, New Jersey, the _____ day of _____, 189 .

President.
Treasurer.

Shares \$100 each.

**Forms
179-180****Form 179.****PREFERRED OR COMMON STOCK.**

INCORPORATED UNDER THE LAWS OF NEW JERSEY.

COMPANY,

Capital stock, \$, divided into preferred seven per cent. cumulative stock, \$; common stock, \$
 Total number of shares, Par value, \$100 each.

THIS CERTIFIES THAT
 is the registered holder of shares of the
 [PREFERRED or COMMON, *as the case may be,*] capital stock of the
 Company, transferable only in person or by attorney duly
 authorized, on the books of the company, upon the surrender of this certificate duly endorsed.

The PREFERRED STOCK is entitled to a fixed cumulative preferential dividend at the rate of, but never exceeding, seven per cent. per annum, to be declared quarterly on the second days of January, April, July and October in each year, or at such other time as the board of directors or the executive committee shall see fit and determine.

The COMMON STOCK is subordinate to the rights of the preferred stock, except that both preferred and common stock have equal voting powers.

The preferred and common stock are issued subject to the provisions of the certificate of incorporation with respect to the rights, privileges and conditions attaching thereto.

This certificate shall not be valid until countersigned by the registrar.

IN WITNESS WHEREOF this certificate is signed by the president and treasurer of the company thereunto duly authorized this day of .

Form 180.**ASSIGNMENT ON BACK OF CERTIFICATE.**

FOR VALUE RECEIVED, hereby sell, assign and transfer
 unto , shares of
 the capital stock, represented by the within certificate, and do hereby
 irrevocably constitute and appoint
 attorney, to transfer the said stock on the books of the within-named
 company, with full power of substitution in the premises.

Dated , 18 .

In the presence of

(Attach and cancel internal revenue stamps at the rate of 2 cents for each \$100 face value. Attach also and cancel a 25-cent internal revenue stamp for the power of attorney.)

CONSOLIDATION AND MERGER.

**Form
181**

No form can be given which will be useful in every case, but it must be modified to meet the particular requirements of each consolidation.

The following is one of the best precedents on file in the office of the secretary of state:

Form 181.

[Sections 104-9, pp. 101-5, *ante*.]

**AGREEMENT FOR THE CONSOLIDATION AND MERGER OF
"THE COMPANY" AND "THE COMPANY."**

THIS AGREEMENT, made this _____ day of _____, in the year eighteen hundred and ninety-_____, between "The Company," a corporation of the State of New Jersey, by the directors thereof; and "The _____ Company," another corporation of the said state, by the directors thereof;

WITNESSETH, that whereas the said companies are now pursuant to the provisions of their respective charters or certificates of incorporation, separately doing business of a similar nature, in the City of _____, New Jersey, and elsewhere in the United States, and for the purpose of greater efficiency and economy of management, as well as for the general welfare of the said companies, it has been deemed advisable to merge and consolidate them under and pursuant to the provisions of an act entitled "An Act concerning corporations (Revision of 1896)," approved April 21, 1896.

AND WHEREAS, the parties hereto have agreed upon the provisions conditions, and restrictions hereinafter set forth:

Now, THEREFORE, in consideration of the mutual agreement, covenants, provisions, and grants herein contained, the said parties do by these presents merge, combine, and consolidate their respective capital stocks, franchises, grants, immunities, privileges, capacities, properties and rights of every name and nature, into a single and new corporation to be called and known by the corporate name and style of the "_____ Company," which said new corporation shall henceforth have and possess all and singular the rights, franchises, powers, immunities, privileges and capacities which are or have been granted to or conferred upon or possessed or enjoyed by either of the said parties hereto by virtue of their charters, and certificates of incorporation, and any of the laws of the State of New Jersey.

And the said parties hereto have agreed upon and by these presents do agree upon and prescribe the following as the terms and conditions of such consolidation; which terms and conditions the said parties hereto do mutually and severally covenant, promise, and agree to observe, keep and perform, viz.:

ARTICLE I.

The name of the new corporation shall be "_____ Company."

The corporate seal of said corporation shall have inscribed thereon

Form
181

the name of the company, the words " , N. J.," and "189 ."
The principal office of said new corporation shall be at No. street,
in the City of , County of , New Jersey.

ARTICLE II.

The management of the affairs of the said corporation shall be vested in directors, to be chosen from the stockholders; each stockholder may vote in person or by proxy, subject nevertheless to such rules and regulations as may be prescribed by the by-laws of said corporation, and the laws of the State of New Jersey. The directors shall choose by a majority vote, a president, vice-president, secretary and treasurer, which said secretary and treasurer, or either of them, need not be chosen from the board of directors; all of said officers shall be chosen or appointed annually, and shall hold office for one year, and until their successors are chosen or appointed and qualified; but the terms of the officers herein named shall expire at the end of the first fiscal year, provided others are elected to take their places; the directors shall have power at any time to remove, for cause and the best interests of the company, such officers as they shall think proper to so remove and appoint others to take the places of those so removed for the unexpired term of the then fiscal year.

The treasurer shall give bond in such sum, and with such sureties as shall be required by the by-laws, for the proper discharge of his duty,

ARTICLE III.

The directors (other than the first board of directors) shall be chosen annually on the of at the office of the company, in the City of

ARTICLE IV.

The number of directors is and the names and post-office addresses of the first board of directors, who shall manage the affairs of the company until their successors shall be chosen, are the following:
(Here should follow names and post-office addresses of directors.)

ARTICLE V.

The names and places of residence of the president, secretary, treasurer and vice-president of said company, who shall hold their offices until their successors shall be chosen, are:
(Here should follow names and post-office addresses of officers of company.)

The location of the principal office in the State of New Jersey is as hereinbefore stated, at No. street, in the City of , County of , New Jersey, and the name of the agent therein and in charge thereof and upon whom process against the corporation may be served is

ARTICLE VI.

The by-laws of the said new company may be hereafter adopted by the directors of said company, and when so adopted shall take the place of those heretofore used, and until new by-laws are adopted as aforesaid those heretofore adopted by the Company shall govern the new company, so far as the same are not inconsistent with this agreement.

ARTICLE VII.

The amount of the capital stock of the new company shall be _____ dollars, and the number of shares into which it shall be divided shall be _____ shares, and the par value of each share shall be _____ dollars.

Nothing in this agreement shall be construed to prevent the company from increasing or decreasing the amount of its capital stock.

ARTICLE VIII.

The said companies are merged and consolidated, upon the understanding and agreement that the present indebtedness of either and both the old companies shall be assumed by the new company, and that the said _____ shares of stock shall be apportioned among and issued to the members and stockholders of the said old companies according to the shares held by the respective stockholders of said old companies, as the same appear upon the books of the old companies; that is to say, one share of stock of the new company shall be issued to the members of the old companies for each share of stock held by them respectively in the said old companies or either of them, which stock shall be full-paid and non-assessable.

ARTICLE IX.

Any stockholder of either of the old corporations or companies upon producing to the treasurer of the new corporation his certificate of stock, and surrendering the same to be cancelled, shall receive from the treasurer of said new corporation a certificate for the proper number of shares of the capital stock thereof, pursuant to Article Number Eight of this agreement.

ARTICLE X.

All property, real, personal and mixed, of each of the corporations, parties hereto, shall vest in the new corporation immediately upon the adoption of this agreement by the stockholders of said old companies.

ARTICLE XI.

The new company shall pay all expenses of consolidation and organization, and all preliminary expenses, including legal expenses.

IN WITNESS WHEREOF, the said parties to this agreement have, in pursuance to a resolution passed by the board of directors of each of the said old companies, at a regular monthly meeting of the board of

**Form
181**

directors of each company, caused the respective corporate seals of each of the said companies to be hereto affixed, and these presents to be signed by their respective presidents and attested by their respective secretaries, all duly authorized thereto, the day and year first above written.

For the

Company,
President.*Attest:*

Secretary.

{ SEAL. }

For the

Company,
President.*Attest:*

Secretary.

{ SEAL. }

To the Secretary of State of the State of New Jersey:

I, _____, the secretary of the _____ Company, a corporation organized by the laws of said state, DO HEREBY CERTIFY, in accordance with the provisions of an act of the Legislature of New Jersey, entitled, "An Act concerning corporations (Revision of 1896)," approved April 21, 1896, that at a meeting of the stockholders of said corporation which was duly held at the office of _____ Trust Company, _____ street, in the City of _____ New Jersey, on _____, the _____ of _____, eighteen hundred and ninety _____, at _____ o'clock in the _____ noon of said day, the said meeting having been duly called for the purpose of taking into consideration the foregoing agreement for the merger and consolidation of the said corporation and another corporation known as the _____

Company into a single and new corporation to be called "The Consolidated _____ Company," upon the terms and conditions mentioned and set forth in said agreement, and the said meeting having been duly organized by the choice of _____ as chairman and _____ as clerk thereof, and it having been made to duly appear by affidavit that twenty days' notice of the time, place and object of said meeting had been duly mailed to each of the stockholders thereof, the said agreement (it being also the joint agreement of the respective directors of said corporations so proposing to merge and consolidate) was duly submitted to said stockholders so met, and was duly considered by them, and that a vote of said stockholders by ballot was thereupon taken for the adoption or rejection of said agreement, and that said ballots were duly cast by said stockholders in person or by proxy, and that the votes of the holders of more than two-thirds of the shares of the capital stock of said corporation were then and there duly cast for and in favor of the adoption of the said agreement; to all of which I do hereby certify under the seal of said corporation;

And that as secretary of said corporation I do cause the foregoing agreement and this certificate to be filed in the office of the secretary of state.

The location of the principal office in this state is at No. _____

street, in the _____ of _____, County of _____.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

WITNESS my hand and the common seal of the corporation this day of , Anno Domini eighteen hundred and ninety .

{ SEAL. }

Secretary.

(Attach and cancel 10-cent internal revenue stamp.)

To the Secretary of State of the State of New Jersey:

I, , the secretary of the Company, a corporation organized by the laws of said state, DO HEREBY CERTIFY, in accordance with the provisions of a certain act of the Legislature of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," approved April 21, 1896, that at a meeting of the stockholders of said corporation which was duly held at the office of , No. street, in the City of , New Jersey, on , the day of , eighteen hundred and ninety , at o'clock in the noon of said day, the said meeting having been duly called for the purpose of taking into consideration the foregoing agreement for the merger and consolidation of the said corporation and another corporation known as the Company into a single and new corporation to be called "The Company," upon the terms and conditions mentioned and set forth in said agreement, and the said meeting having been duly organized by the choice of as chairman and as clerk thereof, and it having been made to appear by affidavit that twenty days' notice of the time, place and object of said meeting had been duly mailed to each of the stockholders thereof, the said agreement (it being also the joint agreement of the respective directors of said corporations so proposing to merge and consolidate) was duly submitted to said stockholders so met, and was duly considered by them, and that a vote of said stockholders by ballot was thereupon taken for the adoption or rejection of said agreement, and that said ballots were duly cast by said stockholders in person or by proxy, and that the votes of the holders of more than two-thirds of the shares of the capital stock of said corporation were then and there duly cast for and in favor of the adoption of said agreement, to all of which I do hereby certify under the seal of said corporation;

And that as secretary of said corporation I do cause the foregoing agreement and this certificate to be filed in the office of the secretary of state.

The location of the principal office in this state is at No.

street, in the of , County of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is .

WITNESS my hand and the common seal of this corporation this day of , Anno Domini eighteen hundred and ninety .

{ SEAL. }

Secretary.

(Attach and cancel 10-cent internal revenue stamp.)

VOLUNTARY DISSOLUTION.

The important statutory provisions respecting the voluntary dissolution of corporations are perhaps not as clear as might be desired.

An examination of the derivative statutes is of interest (see p. 47, *ante.*)

The power of the officers and stockholders of a corporation to dissolve it is purely statutory. (See p. 47, note.) The statute must in all respects be strictly complied with or the dissolution may be held invalid.

Section 31 (p. 47) requires :

(1) A meeting and resolution of the board of directors; (2) the mailing and publication of a notice to and meeting of stockholders; (3) a consent in writing filed with the secretary of state signed by two-thirds of the stockholders; (4) the filing with the secretary of state of a list of the names and residences of the directors and officers certified by the president and secretary or treasurer; (5) the issuing by the secretary of state of "*A certificate that such consent has been filed,*" which certificate is not "a certificate of dissolution," but is a certificate preliminary to dissolution; (6) the publication of such certificate; (7) the filing of an affidavit of publication with the secretary of state.

The certificate issued by the secretary of state should comply with the provisions of section 43a, (p. 59, *ante.*)

The dissolution will then be complete and of record.

The secretary of state is not required to issue a final "*certificate of dissolution*" where the consent of stockholders is not unanimous.

The single exception to the requirements above stated is when all the stockholders consent.

The language of the statute is :

"Whenever all the stockholders shall consent in writing to a dissolution, *no meeting or notice thereof* shall be necessary, but on filing said consent in the office of the secretary of state *he shall forthwith issue a certificate of dissolution* which shall be published as above provided."

It is apparent that if all the stockholders consent there is no necessity for (2), notice to and meeting of the stockholders, or (5), the issuing by the secretary of state of the preliminary "certificate that such consent has been filed," because he issues instead a "certificate of dissolution."

Does the statute mean that it is not necessary to file with the secretary of state a list of the names and residences of the directors and officers who, under the statute, are the trustees on dissolution? (Section 54.) This is not a safe construction.

The object of the statute in this respect is to make a public record of the names and addresses of the directors and officers, because they are under the statute trustees of the company and of the property on dissolu-

To face page 316 of "Dill on New Jersey Corporations,"
Second Edition.

VOLUNTARY DISSOLUTION. Act of 1900. 316a

VOLUNTARY DISSOLUTION.

There should now be attached to all certificates of dissolution a certificate of the comptroller of the treasury that all franchise taxes assessed against the company have been paid. Chapter 126, laws of 1900 (approved March 23, 1900), provides as follows:

" Hereafter no corporation organized under any law of this state shall be dissolved by its stockholders until all taxes levied upon or assessed against such corporation by the state of New Jersey, in accordance with the provisions of an act entitled ' An act to provide for the imposition of state taxes upon certain corporations and for the collection thereof,' approved April eighteenth, one thousand eight hundred and eighty-four, and all acts amendatory thereof or supplementary thereto, shall have been fully paid, and a certificate to that effect, signed by the comptroller of the treasury, shall have been annexed to and filed with the certificate of dissolution."

Such certificate of the comptroller should be attached to forms 182, 183 and 186.

tion (Section 54). Creditors and others are entitled to know the names and addresses of the parties with whom they are to file their claims and to whom they are to look for payment.

**Form
182**

Finally, care should be taken that the certificate of dissolution issued by the secretary of state is in accordance with the statute, and is a "certificate of dissolution," that it complies with Section 43a (p. 59, *ante*), and that it is properly published by advertisement.

While the statute does not, in this case, provide for the filing with the secretary of state of an affidavit of publication of the certificate of dissolution as issued, the proper practice is to file such an affidavit in order that the company may be properly recorded in the office of the secretary of state as dissolved.

Form 182.

[Sections 32, 43a, pp. 48, 59, *ante*.]

CERTIFICATE OF THE SURRENDER OF CORPORATE FRANCHISES.

The location of the principal office in this state is at No. _____
street, in the _____ of _____,
County of _____.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is _____.

We, the subscribers, being all incorporators named in the certificate of incorporation of the _____ Company, a corporation of New Jersey, do hereby certify that no part of the capital of said corporation has been paid, and the business for which the corporation was created has not been begun.

And we do hereby surrender all our corporate rights and franchises which we have obtained by the creation of said corporation, to the end that said corporation may be forthwith dissolved.

Witness our hands and seals _____ day of _____
A. D. 189 _____.

[L. s.]

[L. s.]

[L. s.]

(Attach and cancel 10-cent internal revenue stamp.)

STATE OF _____ }
COUNTY OF _____ } ss.

being severally duly sworn, on their oaths say that the facts stated and certified in the foregoing certificate are true.

Subscribed and sworn to before me, }
this _____ day of _____ }
A. D. 189 _____.

**Forms
183-184****Form 183.**[Section 31, pp. 46, 47, *ante.*]**CERTIFICATE OF DISSOLUTION BY UNANIMOUS CONSENT
OF ALL STOCKHOLDERS**

of the _____ Company.
 The location of the principal office in this state is at No. _____
 street, in the _____ of _____, County of _____
 The name of the agent therein and in charge thereof, upon whom
 process against this corporation may be served, is _____
 We, the subscribers, being all the stockholders of the _____
 Company,
 a corporation of the State of New Jersey, deeming it advisable and most
 for the benefit of said corporation that the same should be forthwith dis-
 solved, do hereby give our consent to the dissolution thereof, as provided
 by "An Act concerning corporations (Revision of 1896)," and do sign this
 consent; to the end that it may be filed in the office of the secretary of
 state of the State of New Jersey.

Witness our hands this _____ day of _____
 A. D. 18 ____ .
 STATE OF _____ } ss.
 COUNTY OF _____

_____ the secretary of the above named
 Company,
 being duly sworn, on his oath says that the foregoing consent to the dis-
 solution of said corporation has been signed by every stockholder of said
 company.

Subscribed and sworn to before me, }
 this _____ day of _____ }
 _____, A. D. 189 ____ . }

*(Attach and cancel 10-cent internal revenue stamp. Add list of
 directors and officers at time of dissolution; see form 187, p. 322, post.)*

Form 184.**AFFIDAVITS OF PUBLICATION.**

The location of the principal office in this state is at No. _____
 street, in the _____ of _____, County of _____
 The name of the agent therein and in charge thereof, upon whom
 process against this corporation may be served, is _____

STATE OF _____ } ss.
 COUNTY OF _____

_____, the secretary of The
 being duly sworn, on his oath says, that the board of directors of the said
 company have caused the certificate of dissolution of The _____

a copy whereof is hereto annexed, issued by the
secretary of state of the State of New Jersey, dated the day of
 , 189 , to be published in the , a newspaper
published at the City of and circulated in the County of ,
being the county in which said company has been located and conducting
its business, for the period of four weeks successively, at least once in
each week, commencing on the day of , 189 , as
required by section thirty-one of an act entitled "An Act concerning
corporations (Revision of 1896)," approved April twenty-first, one thou-
sand eight hundred and ninety-six.

Sworn and subscribed before me, the }
day of , A. D. 189 . }

STATE OF NEW JERSEY, } ss.
COUNTY OF }

 , of lawful age, being duly sworn
according to law, doth depose and say, that he is of
 , a newspaper printed and published in the City
of and County of and State of New Jersey, and
that the notice, of which the annexed printed slip is a true copy, has been
published in said newspaper, successively, for the period of ,
commencing on the day of , 189 .

Sworn and subscribed before me, the }
day of , 189 . }

(Annex copy of notice as published.)

Form 185.

[Sections 31, 43a, pp. 46, 47, 59, *ante*.]

CERTIFICATE OF DISSOLUTION ISSUED BY SECRETARY OF
STATE.

STATE OF NEW JERSEY,

DEPARTMENT OF STATE.

CERTIFICATE OF DISSOLUTION.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, it appears to my satisfaction by duly authenticated record
of the proceedings for the voluntary dissolution thereof by the unanimous
consent of all the stockholders, deposited in my office that the

Company,
a corporation of this state, whose principal office is situated at No.
street, in the of County
of State of New Jersey (
being agent therein and in charge thereof upon whom process may be

**Form
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served), has complied with the requirements of "An Act concerning corporations (Revision of 1896)," preliminary to the issuing of this

CERTIFICATE OF DISSOLUTION.

NOW, THEREFORE, I, GEORGE WURTS, secretary of state of the State of New Jersey, do hereby certify that the said corporation did on the _____ day of _____ 189____, file in my office a duly executed and attested consent in writing to the dissolution of said corporation executed by all the stockholders thereof, which said consent, and the record of the proceedings aforesaid are now on file in my said office as provided by law.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed my official seal at Trenton this _____ day of _____ A. D., eighteen hundred and ninety-
[L. s.] Secretary of State.

Form 186.

[Sections 31, 43a, pp. 46, 47, 59, *ante.*]

**CERTIFICATE OF DISSOLUTION BY VOTE OF DIRECTORS
AND CONSENT OF STOCKHOLDERS (NOT UNANIMOUS.)**

The location of the principal office in this state is at No. _____ street, in the _____ of _____, County of _____.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is _____.

We, the undersigned, being a majority of the board of directors of the _____ DO HEREBY CERTIFY that at a meeting of the said board, called for that purpose, and held on the _____ day of _____, A. D. 189____, said board, by a majority of the whole board, did adopt the following resolution:

RESOLVED, that in the judgment of this board, it is advisable and most for the benefit of the _____ that the same should be forthwith dissolved; and to that end it is ordered that a meeting of the stockholders be held on _____ the _____ day of _____, A. D. 189____, at the office of the company, in the City of _____, to take action upon this resolution; and, further, that the secretary forthwith give notice of said meeting, and of the adoption of this resolution, within ten days from this date, by publishing the said resolution, with a notice of its adoption, in the _____, a newspaper published in the City of _____, for at least four weeks, once a week, successively, and by mailing a written or printed copy of the same to each and every stockholder of this company in the United States.

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IN WITNESS WHEREOF, we have hereunto set our hands and affixed the corporate seal of said company this day of , A. D. 189 .

[L. S.]

Attest :

Secretary.

(Attach a 10-cent internal revenue stamp and cancel same.)

CONSENT OF STOCKHOLDERS TO DISSOLUTION.

WHEREAS, on the day of A. D. 189 , the directors of the , by a majority vote of the whole board, at a meeting called for that purpose, of which meeting every director received at least three days' notice, did adopt a resolution in the words or to the effect following, to wit :

"RESOLVED, that in the judgment of the board, it is advisable and most for the benefit of the _____ that the same should be forthwith dissolved; and to that end it is ordered that a meeting of the stockholders be held on _____ the _____ day of _____, A. D. 189 _____, at the office of the company, in _____, to take action upon this resolution; and, further, that the secretary forthwith give notice of said meeting, and of the adoption of this resolution, within ten days from this date, by publishing the said resolution with a notice of its adoption in the _____, a newspaper published in _____, for at least four weeks, once a week, successively, and by mailing a written or printed copy of the same to each and every stockholder of this company in the United States;"

AND, WHEREAS, the secretary of the said company did give notice of the meeting of stockholders, called by said resolution, as required by law and the said resolution;

NOW, THEREFORE, we, the subscribers, being more than two-thirds in interest of all the stockholders, being met together in pursuance of said resolution and notice, have consented, and do hereby consent, that the said company be forthwith dissolved as proposed in said resolution.

WITNESS our hands this day of , A. D. 189 .

Shares. Shares.

Shares. Shares.

Shares.**Shares.****Shares.****Shares.**

Attest:

Secretary.

STATE OF NEW JERSEY, }
COUNTY OF } ss.

being duly sworn, on his oath says,

that he is the secretary of the
that he saw

being more than two-thirds in interest of the stockholders of said company, at a meeting duly called for the purpose as above recited, sign the

**Form
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foregoing certificate of consent as their voluntary act and deed, and that deponent at the same time subscribed the same as attesting witness; and deponent further says, that on the day of , A. D. 189 , he mailed a printed copy of the resolution above recited, with a notice of the adoption thereof, to each and every stockholder of said company, residing in the United States, and also caused the same to be duly published as required by the said resolution; and deponent further says, that the said resolution of the board of directors was duly adopted upon lawful notice as in the certificate above recited.

Sworn and subscribed before me, }
this day of }
 , A. D. 189 . }

(Attach and cancel 10-cent internal revenue stamp.)

AFFIDAVIT OF PUBLICATION.

STATE OF NEW JERSEY, }
COUNTY OF } ss.

 of lawful age, being duly sworn according to law, doth depose and say, that he is of , a newspaper printed and published in the City of and County of and State of New Jersey, and that the notice, of which the annexed printed slip is a true copy, has been published in said newspaper, successively, for the period of commencing on the day of , 189 .

Sworn and subscribed before me, }
the day of }
 , A. D. 189 . }

(Attach copy of advertisement.)

Form 187.

[Sections 31, 43a, pp. 46, 47, 59, *ante.*]

LIST OF DIRECTORS AND OFFICERS AT TIME OF
DISSOLUTION.

As required by "An Act concerning corporations (Revision of 1896)," the board of directors of The Company, render the following statement to be filed in the office of the secretary of state of the State of New Jersey, upon the dissolution of said company.

The location of the principal office in this state is at No.

 street, in the of County of .

The name of the agent therein and in charge thereof, and upon whom process against the corporation may be served, is

CERTIFICATE OF SECRETARY OF STATE.

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The following is a list of the names and residences of the directors and officers of said company: **Form 188**

NAMES.	RESIDENCES.

The officers of the company are:

President,
Vice-President,
2d Vice-President,
3d Vice-President,
Secretary,
Treasurer,

Dated , 189 .

The foregoing statement is correct and true.

President.

Attest :

Secretary.

Form 188.

[Sections 31, 43a, pp. 46, 47, 59, *ante*.]

CERTIFICATE OF FILING OF CONSENT TO DISSOLUTION
ISSUED BY SECRETARY OF STATE.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

CERTIFICATE OF FILING OF CONSENT BY STOCKHOLDERS
TO DISSOLUTION.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, it appears to my satisfaction by duly authenticated record of the proceedings for the voluntary dissolution thereof deposited in my office that the Company, a corporation of New Jersey, whose principal office is situated at No. street, in the of County of State of New Jersey (being the agent therein and in charge thereof upon whom process may be served), has complied with the requirements of "An Act concerning corporations (Revision of 1896)" preliminary to the issuing of this certificate that such consent has been filed.

NOW, THEREFORE, I, George Wurts, Secretary of State of the State of New Jersey, do hereby certify that the said corporation did on the day 189 , file in my office a duly executed and attested consent in writing to the dissolution of said corporation executed

**Form
189**

by more than two-thirds in interest of the stockholders thereof, which said certificate, and the record of the proceedings aforesaid, are now on file in my said office as provided by law.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed my official seal at Trenton, this day of A. D. eighteen hundred and ninety-

Secretary of State.

FOREIGN CORPORATIONS.

Form 189.

[Section 97, p. 97, *ante.*]

STATEMENT BY A FOREIGN CORPORATION TRANSACTING BUSINESS IN THE STATE OF NEW JERSEY.

The Company, a corporation foreign to the State of New Jersey and organized under the laws of the State of , does hereby, pursuant to the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," make the following statement and designation:

FIRST.—That the total amount of the capital stock said company is authorized to issue is \$, and the amount actually issued is \$.

SECOND.—The character of the business which the said company is to transact in the State of New Jersey is

and as provided in its certificate of incorporation, a copy of which, attested by its president and secretary under its corporate seal, is hereto affixed as part hereof.

THIRD.—That the principal office in New Jersey of the undersigned corporation is the office of the Trust Company, located at No. street, New Jersey, and the aforesaid trust company, a corporation under the laws of New Jersey, is hereby designated as the agent therein and in charge thereof, and upon whom process against this corporation may be served.

IN TESTIMONY WHEREOF, the said corporation hath caused its corporate seal to be hereto affixed, and these presents to be signed by its president and attested by its secretary,

[L. S.] the day of A. D. 189 .
The Company.
By President.

Attest:

Secretary.

(Attach statement of directors, officers, &c. See form 172, p. 302. Then annex copy of charter or certificate of incorporation.)

FOREIGN CORPORATIONS.

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The undersigned, president and secretary, respectively, of the _____ Company,
DO HEREBY CERTIFY, that the annexed is a true and correct copy of the
certificate of incorporation of the aforesaid company and the whole
thereof.

IN ATTESTATION WHEREOF, we have affixed our hands and
the corporate seal of the company, this
day of _____, 189 .

{ SEAL. }

President.
Secretary.

(Attach and cancel 10-cent internal revenue stamp.)

Form 190.

[Section 99, p. 99, *ante*.]

CERTIFICATE OF SUBSTITUTION OF AGENT OF A FOREIGN
CORPORATION.

The _____ Company,
a corporation organized under the laws of the State of _____
does hereby revoke, cancel and annul the appointment of (*name of present
agent*) as its agent, upon whom process may be served, said appointment
having been made heretofore and filed in the office of the secretary of
state of New Jersey, under the seal of the aforesaid company by its
president and attested by its secretary under and in pursuance of the
statutes of the State of New Jersey, and in substitution of the aforesaid
designation so filed with the secretary of the state of New Jersey, the
company above named does hereby make, designate and appoint the

Trust Company, a corporation organized under
the laws of New Jersey, with an office at No. _____ street
New Jersey, which is the principal office of the company, as the agent of
said company therein and in charge thereof, upon whom process against
said company may be served.

IN ATTESTATION WHEREOF, said corporation has caused this certificate
{ Corporate } to be signed by its president and secretary, and its cor-
{ Seal. } porate seal to be hereto affixed, the _____ day
of _____, A.D. 189 .

For the Company,

President.

Attest:

Secretary.

(Attach and cancel 10-cent internal revenue stamp.)

APPENDIX I.

SCHEDULE OF FEES AND TAXES.

FEES OF SECRETARY OF STATE.

Domestic Corporations.

Amended certificate of incorporation (other than those authorizing increase of capital stock),	\$20 00
Annual report of directors, officers, &c.,	1 00
Certificate of change of location of principal office, under § 28a,	5 00
§ 27,	20 00
name,	20 00
nature of business,	20 00
decrease of capital stock,	20 00
par value of shares,	20 00
dissolution,	20 00

extension or renewal of corporate existence:

The same fee as required for original certificates of incorporation (q. v.). The secretary of state has ruled that this fee must be upon the amount of stock which the company is authorized to issue at the time of filing the certificate of extension, not on the amount named in the original certificate of incorporation.

incorporation:

Where total authorized capital stock is \$125,000 or less,	25 00
If total authorized capital exceeds \$125,000, for each additional \$1,000,	20

increase of capital stock:

If amount of increased stock authorized is \$100,000 or less,	20 00
For each additional \$1,000 of increased stock,	20
increase of par value of shares,	20 00
payment of capital stock,	5 00

Certificates not expressly provided for,	5 00
Certifying copy of certificate of incorporation or other paper,	1 00

Consolidation and merger of corporation:

For each \$1,000 of capital stock authorized beyond the total authorized capital of the corporations merged or consolidated, twenty cents; but in no case less than	20 00
---	-------

Foreign Corporations.

Filing copy charter and statement and issuing certificate of authority to transact business, \$10 00

(*Note:* This fee applies only to corporations created under laws of states which do not exact a larger fee than \$10.00 from a New Jersey corporation carrying on business therein. See Section 101, pp. 99-100, *ante*. Corporations of states exacting a larger fee or tax are required to pay the same amount for the privilege of carrying on business in New Jersey as a New Jersey corporation would have to pay in that state.)

Filing annual report of directors, &c., 1 00

FEES OF COUNTY CLERK.

For recording original or amended certificate of incorporation according to length, about 3 50

FRANCHISE TAXES.

See p. 117, *ante*.

APPENDIX II.

STAMP TAXES.

(Provisions of War Revenue Act of Congress of June 13, 1898.)

General Provisions.

SEC. 6. That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively or otherwise specified or set forth in the said schedule.

SEC. 7. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document, or paper, as aforesaid, shall not be competent evidence in any court.

SEC. 9. That in any and all cases where an adhesive stamp shall be used for denoting any tax imposed by this Act, except as hereinafter provided, the person using or affixing the same shall write or stamp thereupon the initials of his name, and the date upon which the same shall be attached or used, so that the same may not again be used: And if any person shall fraudulently make use of an adhesive stamp to denote any tax imposed by this Act without so effectually canceling and obliterating such stamp, except as before mentioned, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than fifty nor more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

SEC. 13. That any person or persons who shall register, issue, sell or transfer, or who shall cause to be issued, registered, sold or transferred, any instrument, document, or paper, of any kind or description whatsoever mentioned in Schedule A of this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in a manner required by law, with intent

to evade the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court, and such instrument, document, or paper, not being stamped according to law, shall be deemed invalid and of no effect.

SEC. 14. That hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded or admitted, or used as evidence in any court until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law; *Provided*, That any bond, debenture, certificate of stock, or certificate of indebtedness issued in any foreign country shall pay the same tax as is required by law on similar instruments when issued, sold or transferred in the United States; and the party to whom same is issued or by whom it is sold or transferred, shall, before selling or transferring the same, affix thereon the stamp or stamps indicating the tax required.

SEC. 15. That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law; and the record, registry, or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed and canceled as aforesaid shall not be used in evidence.

Schedule A.

(Provisions especially applicable to corporations.)

Bonds, debentures, or certificates of indebtedness issued after the first day of July, Anno Domini eighteen hundred and ninety-eight, by any association, company, or corporation, on each hundred dollars of face value or fraction thereof, 5 cents,
and on each **original issue**, whether on organization or reorganization, of **certificates of stock** by any such association, company, or corporation, on each hundred dollars of face value or fraction thereof, 5 cents,

The stamp should be placed on the face of the certificate of stock.

A safe rule to apply in determining whether it is an original issue is to ask: Does the certificate in question increase the outstanding stock (either common or preferred) of the corporation? If the answer is Yes, a stamp is required, otherwise not. This applies to all stock *originally* issued, whether on organization or reorganization. If preferred stock is issued in exchange for common, or *vice versa*, it is a question whether a stamp is required.

The tax is computed on the nominal face value of the certificate as a whole, without regard to the par value of each share or the amount that has been paid into the treasury of the company thereon. (Commissioner's ruling.)

Only on certificates of stock of original issues is the stamp required to be placed *on the face of the certificate*. In all other cases the stamp should be placed on the back of the old certificate, on the memorandum of sale or on the transfer book itself, as provided below.

and on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any association, company or corporation, whether made upon or shown

by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, on each hundred dollars of face value or fraction thereof, 2 cents;

A power of attorney on the back of a certificate of stock to transfer shares requires a twenty-five-cent stamp as a power of attorney in addition to the tax on the transfer at the rate of two cents per \$100. (Commissioner's ruling.)

Where the owner of stock merely surrenders his certificate and takes a number of certificates in his own name in exchange for it, there is no transfer and no stamp is required. (Commissioner's ruling.)

Where stock is pledged as collateral to a loan, the stamp tax is to be reckoned not on the face value of the certificate or securities, but on the amount of money loaned above \$1,000. (Commissioner's ruling.)

The stamp should be affixed to the note accompanying the pledge, and the note should also be stamped as a note. (Commissioner's ruling.)

Provided, That in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. And any person or persons liable to pay the tax as herein provided, or any one who acts in the matter as agent or broker for such person or persons, who shall make any such sale, or who shall in pursuance of any such sale deliver any such stock, or evidence of the sale of any such stock or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, . . . 50 cents.

Certificate of profits, or any certificate or memorandum showing an interest in the property or accumulations of any associa-

- tion, company, or corporation, and on all transfers thereof, on each one hundred dollars of face value or fraction thereof, . . . 2 cents.
- Certificates of any description required by law not otherwise specified in this act, 10 cents.**

This includes original and amended certificates of incorporation, certificates of payment of capital stock, certificates of change of location of principal office, as well as all other certificates required by the General Corporation Act.

The acknowledgment to a certificate of incorporation also requires a ten-cent stamp. (Commissioner's ruling.)

The certificate of a county clerk attached to a certificate of acknowledgment requires a ten-cent stamp.

- Conveyance: Deed, instrument, or writing whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, 50 cents,**
- and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, 50 cents.**

- Mortgage or pledge, of lands, estate, or property, real or personal, heritable, or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money, lent at the time or previously due and owing or foreborne to be paid, being payable; also any conveyance of any lands, estate, or property whatsoever, in trust to be sold or otherwise converted into money, which shall be intended only as security, either by express stipulation or otherwise; on any of the foregoing exceeding one thousand dollars and not exceeding one thousand five hundred dollars. 25 cents,**
- and on each five hundred dollars or fractional part thereof in excess of fifteen hundred dollars, 25 cents;**

Provided, That upon each and every assignment or transfer of a mortgage, lease, or policy of insurance, or the renewal or continuance of any agreement, contract, or charter, by letter or otherwise, a stamp duty shall be required and paid at the same rate as that imposed on the original instrument.

- Power of attorney or proxy for voting at any election for officers of any incorporated company or association, except religious, charitable, or literary societies, or public cemeteries . . . 10 cents.**

If any business other than the election of officers is authorized to be voted on under the proxy it requires a twenty-five-cent stamp as a general power of attorney. (Commissioner's ruling.)

When several stockholders join in executing one proxy one stamp is sufficient. (Commissioner's ruling.)

- Power of attorney to sell and convey real estate, or to rent or lease the same, to receive or collect rent, to sell or transfer any stock, bonds, scrip, or for the collection of any dividends or interest thereon, or to perform any and all other acts not hereinbefore specified. 25 cents.**

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